

SECTION 2

DRAFT CONCESSION AGREEMENT

BETWEEN

**NAYA RAIPUR DEVELOPMENT AUTHORITY
[“NRDA” OR “CONCESSIONING AUTHORITY”]**

AND

**(Name of the Concessionaire)
[“CONCESSIONAIRE”]**

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Draft Concession Agreement

This **AGREEMENT** is entered into on this the _____ day of _____ (month), _____ (year) at Raipur,

BETWEEN

Naya Raipur Development Authority (NRDA) having its office at Utility Block, Capital Complex, Near Solar Power Plant, Sector 19, Naya Raipur, Chhattisgarh (hereinafter referred to as "**Concessing Authority**" or "**NRDA**", which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of the **FIRST PART**;

_____ Pvt. Ltd., a company incorporated under provisions of the Companies Act, 2013, having its registered office at _____ (hereinafter referred to as the "**Concessionaire**", which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the **SECOND PART**;

WHEREAS,

- A. The Authority had resolved to develop an Amusement and Recreational Park at Sector-24 , Naya Raipur, Chhattisgarh (the "**Project**") on Design, Build, Finance, Operate and Transfer ("**DBFOT**") basis comprising ~220507.14 Sq Meter (54.49 acres) in accordance with the terms and conditions set forth in this Concession Agreement.
- B. Concessing Authority is in the ownership and possession of the aforesaid land comprising ~220507.14 sq m (~54.49 Acres)(as per details of Project Site attached at Schedule 1).
- C. The Authority had accordingly invited proposals by its Request for Proposal No. dated 2015 (the "**Request for Proposal**" or "**RFP**") for selection of bidders for construction, operation and maintenance of the above referred facility on DBFOT basis.
- D. Concessing Authority evaluated the Financial Proposals submitted by all Bidders who met the Technical Qualification criterion specified in the RFP document and accepted the Proposal/Bid submitted by the "**Successful Bidder**" consisting of M/s _____, _____ & _____ (collectively the "**Consortium**") with _____ as its Lead Member or M/s _____ (Single/ Individual Bidder) and a Notice of Award, bearing No. _____ Dated _____ was issued to the Successful Bidder.
- E. As per the terms and conditions of the RFP Document, the Successful Bidder {have incorporated the Concessionaire as a Special Purpose Company (SPV) in India / is a company incorporated} under the Companies Act, 2013 to implement the Project and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project. The Successful Bidder hereby agrees to serve as a guarantor towards the roles and obligations of the Concessionaire as detailed out in this Concession Agreement.
- F. The Authority, has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter
- G. Concessing Authority acknowledges that as on this day, the Concessionaire has submitted an unconditional and irrevocable revolving Bank Guarantee for a value of **Rs.2,75,00,000/- (Rupees two crores seventy five lacs only)** as Performance Security for the Concession Period of 60 years, as per the conditions specified in Article 3.2.

- H. Concessing Authority acknowledges that as on this day, the Concessionaire has submitted Demand Draft No.....dated .././2015 of Rs. 2,00,00,000 (Rupees two crores) in favour of CEO, Naya Raipur Development Authority payable at Raipur/Naya Raipur as One time upfront fees,as per the conditions specified in Clause 1.2.7 of the RFP .
- I. In pursuance to the above, Concessing Authority is executing this Agreement to grant the Concession to the Concessionaire to develop, design, engineer, finance, construct, market, operate & maintain and manage the above mentioned Project and its allied facilities at Naya Raipur, Chhattisgarh, in accordance with terms, conditions and covenants hereinafter set forth.

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

ARTICLE - 1
DEFINITIONS & INTERPRETATIONS

1.1 Definitions

In this Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

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

"Agreement" means this signed Concession Agreement (including the Schedules, Recitals of the Concession Agreement, the Notice of Award issued by NRDA, the written clarifications, addendums, amendments etc to the RFP document issued subsequently to the Bidders and all other documents and papers attached as annexure).

"Amusement Park" shall have the meaning ascribed to it in Schedule 4.

"Annual Concession Fee" shall have the meaning ascribed to it in Article 2.9.1.

"Appendix" means any of the schedules, supplements or documents appended to this Agreement.

"Applicable Laws" means any statute, law, regulation, development control regulations, ordinance, notification, rule, judgment, order, decree, bye-law, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency or instrumentality thereof having jurisdiction over the matter in question, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all clearances, permits, authorisations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or maintained under or pursuant to Applicable Laws, in connection with implementation of the Project during the subsistence of this Agreement.

"Appointed Date" means the date of this Agreement.

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof as in force from time to time.

"Annual Lease Rent" shall have the meaning as set forth in 2.9.2.

"Certificate of Compliance" shall have the meaning ascribed to it in Article 2.4.1(ii).

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

"Completion Certificate" means the certificate issued to the Concessionaire by the Concessions Authority as described in Article 2.8.1.iii.

"Concession Period" or "Term" of the Concession Agreement shall have the meaning ascribed to it in Article 2.7.

"Concessionaire Event of Default" shall have the meaning ascribed to it in Article 6.1 (a).

"Concessionaire's Proposal to Rectify" shall have the meaning ascribed to it in Article 6.2 (a)(ii).

"Concessions Authority Event of Default" shall have the meaning ascribed to it in Article 6.1 (b).

"Concessions Authority Proposal to Rectify" shall have the meaning ascribed to it in Article 6.2 (b)(ii).

"Consortium" means the consortium consisting of (i), and (ii)formed, to implement the Project

"Competent Authority" means the concerned department, Government Instrumentality or authority of the Concessions Authority duly empowered and authorized to grant necessary sanctions and approvals.

"Compliance Date" means the date falling after 180 (One hundred and eighty) days after the Appointed Date or such other date as agreed to between Concessions Authority and the

Concessionaire by which time the Parties fulfill their Conditions Precedent (under Article 2.4), by the issuance of “**Certificate of Compliance**” to each other by the respective Parties / their authorized representatives.

“**Conditions Precedent**” shall have the meaning ascribed to it in Article 2.4.

“**Construction Period**” means the period from the Compliance Date till the achievement of Project Milestone and the issuance of Project Milestone Completion Certificate, in accordance with the Project Milestone set forth in Article 2.8.

“**Contractor(s)**” means a reputed Person with whom the Concessionaire has entered into or may enter into contracts / agreements for the purpose of development and implementation of the Project.

“**Cure Period**” shall have the meaning ascribed to it in Article 6.2 (a) (iii).

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

- a) The principal amount of the debt provided by the Senior Lender under the Financing Documents for financing the Project, which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Concessioneing Authority; and
- b) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the Para (a) above up to the date preceding the Termination Date but excluding any interest or charges that had fallen due one year prior to the Termination Date, and penal interest or charges payable under the Financing Documents to any Senior Lender.

“**Detailed Project Report (DPR)**” shall mean a report which shall, *inter alia*, set out the full details of the developmental activities proposed to be carried out by the concessionaire for implementation of the Project, detailed drawings and designs, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by concessionaire, the project implementation schedule with the milestones, bar charts/PERT networks with milestone dates, master plan and building plan, including the site development, plotted development and disposal of activities, proposed construction activities, names of likely subcontractors/vendors etc, detailed estimates,debt and equity arrangement, mobilization of finances, plans for marketing, proposed arrangement for operating and managing the projects, plans for golf events, the organization chart of the SPV and such other similar details which define and clarify the method and direction of the concessionaire's plans for the implementation of the project.

“**Dispute Resolution**” shall have the meaning ascribed to it in Article 7.

“**Easementary Rights**” means all easements, reservations, right-of-way, utilities and other similar rights as to the use of the real property, which are necessary or appropriate for the conduct of business of the Concessionaire related to the Project.

“**Encumbrance**” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

“**Expert**” shall have the meaning ascribed to it in Article 4.2 (a).

“**Financial Assistance**” means the aggregate amount provided to the Concessionaire by way of loan, finance, advances, guarantees, refinancing or otherwise and other debt instruments by the Senior Lenders for the financing of the Total Project Cost (including any amendments or modifications made thereto) and for all facilities and services relating to the Project.

“**Financial Closure**” means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case not be later than 180 days from the Appointed Date as applicable hereof..

“**Financial Year**” means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the

Compliance Date to immediately following 31st March. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.

“Financing Documents” means the documents / agreements executed by the Concessionaire in respect of Financial Assistance to be provided by the Senior Lenders to the Concessionaire by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost.

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 5.

“Good Industry Practice” means 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 from a skilled and experienced Person engaged in the development, implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type and size similar to that of the Project.

“Gol” shall mean the Government of India.

“Legal Entity” shall mean any body corporate, organization, society, trust or institution established as per the applicable laws of India, or in case of a Foreign Entity, recognized or found eligible by Government of India to enter into any commercial trade or transaction, after obtaining necessary approvals and sanctions from the Government of India in this regard, as per the applicable laws of India including national security and public interest perspective.

“Material Adverse Effect” means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provision of this Concession Agreement or any of the Project Agreements.

“Material Breach” means 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.

“Movable Assets” shall mean and include all such machines, equipments and furniture/s of the Project Facility, which are tangible in nature and that is movable (and not immovable like the civil structure etc), and which was owned by the Concessionaire and used as part of overall Development, Operation and Maintenance of the Project Facility..

“NRDA” means Naya Raipur Development Authority.

“Notice to Commence” shall have the meaning ascribed to it in Article 2.4.1 (iii).

“Operation and Maintenance Phase” is the period commencing after the Project Construction Completion Date (as per Project Milestone in Article 2.8) and terminating at the Transfer Date.

“O&M Manual” shall have the meaning ascribed to it in Article 3.5 (b)

“O&M Expenses” means expenses incurred towards Operations and Maintenance of the Project Facility/ies

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

“Performance Security” means the Performance Security by way of Bank Guarantee from a scheduled nationalised bank acceptable to Concessioneing Authority, as per Schedule 2, and as also ascribed to in Article 3.2.

“Person” unless specifically provided otherwise, shall mean any individual, company, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit.

“Preliminary Notice to Remedy” shall have the meaning ascribed to it in Article 6.2 (a) (ii) and Article 6.2 (b) (ii).

“Project” means, subject to the provisions of this Concession Agreement, the development, financing, designing, construction, operation, maintenance and management, at the Project Site, of Amusement and Recreation Park. The Project shall also include all equipments, foundations, buildings, structures, super-structures, constructions, additions, alterations or improvements, etc. thereof, landscape structures, pavements, walkways, drainage facilities, sign boards, electrical, mechanical, civil, sanitation, HVAC, furnishings and other works, equipments installed therein to be

used for the purposes of the Project and including but not limited to the furniture, fixtures and equipments, other related facilities installed or affixed and all additions, modifications, alterations and extensions thereto as may be effected by the Concessionaire from time to time, as per the approved and sanctioned plans on the Project Site.

“Project Agreements” means collectively, this Concession Agreement, the Financing Documents, Construction Agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time and any other agreements or contract that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project.

“Project Assets” means all tangible and intangible assets relating to the Project / Project Facility.

“Project Facility” means the Amusement Park and Recreational Park including the facilities and amenities to be provided in the Amusement Park and Recreational Park as per the specifications given under Schedule 4.

“Project Milestone Schedule ” means the milestone as set out in Article 2.8 and Schedule-6.

“Provisional Certificate” means the certificate issued to the Concessionaire by the Concessioneing Authority as described in Article 2.8.1.iv.

“Project Site” means the land area earmarked for the development of Amusement Park and Recreational Park at Naya Raipur, comprising a land area of ~220507,14 sq m (~54.49 Acres). However, the details of Project Site has been laid down in Schedule-1, wherein the Project/ Project Facility is to be developed, constructed, implemented, established, operated, maintained and managed by the Concessionaire in accordance with the provisions of this Agreement.

“Punch List” means the list of item as described in Article 2.8.1.iv.

“Recreational Park” shall have the meaning ascribed to it in Schedule 4.

“Regulatory Approvals” shall mean Governmental or regulatory approvals required by the Parties for the establishment of the Project in Naya Raipur and as per the applicable laws of India.

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Right of Way” means the constructive possession of the Project Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Concession Agreement;

“Rupee(s)” or “Rs.” or “Re.” shall mean Indian rupee(s).

“SBI PLR” means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India or any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.

“Scheduled Completion Date” means a date of the completion of the Construction Period, which shall be at the expiry of a period of 5 (Five) years from the Appointed Date or such other date (with the consent of Concessioneing Authority) by which the overall development and operationalisation of the Project is completed in accordance with the provisions of this Agreement and when the Completion Certificate is issued by Concessioneing Authority as per Article 2.8.

“Senior Lenders” means financial institutions, banks and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting all or any part of the Total Project Cost and who hold *pari pasu* charge on the assets, rights, title and interests of the Concessionaire

“Structural Engineer” shall have the meaning ascribed to it in Article 3.4 (g).

“Structural Safety Certificate” shall have the meaning ascribed to it in Article 3.4 (e).

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

- (a) The principal amount of debt provided by lenders or the Concessionaire for meeting the Total Project Cost and subordinated to the Financial Assistance provided by the Senior Lenders; and
- (b) All accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the SBI PLR in

case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

“Successful Bidder” means the Single/ Individual Bidder or the Bidder Consortium consisting of M/s _____, _____ & _____ (with _____ as its Lead Member) that is finally awarded the Project and invited to enter into this Concession Agreement.

“Termination” means early termination of this Agreement, pursuant to Termination Notice or non-fulfilment of Conditions Precedent 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” means the date specified in the Termination Notice as the date on which Termination occurs.

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

“Termination Payment” means the amount payable by the Concessioneing Authority to the Concessionaire upon Termination in accordance with the provisions of this Agreement; It is agreed that within a period of 60 (sixty) days from Project Construction Completion Date, the Concessionaire shall notify to the Concessioneing Authority, the Total Project Cost as on Project Construction Completion Date and its disaggregation between Debt Due, Subordinated Debt and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Concessioneing Authority, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost.

“Third Party” or “Third Parties” means any Person, real or legal or Entity other than the Parties of this Agreement.

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

- (a) Total Project Cost as set forth in the Financing Documents.
- (b) Actual capital cost of the Project upon completion of the Project as certified by statutory auditor(s).
- (c) Total Project cost as mentioned in DPR.

Provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Debt Due, as the case may be, in accordance with the provisions of this Agreement;

“Transfer Assets” shall mean both the Movable Assets and immovable assets, fully operational and functional, of the Project which are necessary or required for the performance of services and such other assets as Concessionaire procures in accordance with the provisions of this Agreement and shall specifically include all land, property and structures thereupon acquired during the term, all equipment and services, furnishings, etc. in relation to the operation of the Project, as existing on the date of Termination.

“Transfer Date” means the date immediately following the date of the expiry of the Term under this Concession Agreement or any earlier termination thereof in accordance with the provisions of this Agreement.

“Users” means all the persons who use all or any one or more of the facilities, amenities, utilities etc. established or provided in the Project under suitable arrangement entered into by such persons with the Concessionaire / Concessionaire’s sub-lessees on terms and conditions as stipulated from time to time by the Concessionaire’s sub-lessees in this regard.

“User Charges” means all charges, costs, fees, tariff, rentals and other amounts by whatever name called, payable to Concessionaire by the users or any other Person, etc. pursuant to this Agreement, for the purpose of rendering of services by the Concessionaire and utilisation of the Project Facility of

the Project by such users, or other Persons, at any time and from time to time in relation to the Project.

“**Vesting Certificate**” shall have the meaning ascribed to it in Article 6.6 (viii).

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 or is capable of applying to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye laws which have the force of law in Naya Raipur forming part of the Union of India;
- 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 or partnerships, organisations or other entities (whether or not having a separate legal entity);
- d. terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e. 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;
- f. the words "include" and "including" are to be construed without limitation;
- g. references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to day shall mean a reference to a calendar day;
- j. any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- k. reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- l. the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m. 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;
- n. references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- o. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- p. unless otherwise stated, any reference to any period commencing "from" a specified day
- q. or date and "till" or "until" a specified day or date shall include both such days or dates.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities and Discrepancies

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

- a. between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b. between the Articles of this Agreement and the Schedules, the Articles shall prevail, between Schedules and Appendices, the Schedules shall prevail;
- c. between the written description on the drawings and the specifications and standards, the latter shall prevail;
- d. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- e. Between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

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

- i) This signed Concession Agreement (including its Schedules), RFP document along with any Addendum issued to the RFP document dated _____;
- ii) All other documents enclosed/ attached with this signed Concession Agreement.

ARTICLE 2
THE CONCESSION

2.1 Grant of rights to Concessionaire

- a. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and Applicable Permits, the Concessions Authority hereby authorises the Concessionaire to invest, finance, design, engineer, construct, equip, commission, operate, market, maintain and manage the Project during the Term of this Agreement.
- b. For the purpose of implementing the Project, Concessions Authority inter alia grants to the Concessionaire all the rights, powers, benefits, privileges, authorizations and entitlements, to utilise the Project Site for the purposes of the Project, and to further undertake the development, construction and improvement therein or thereon, as may be necessary or appropriate to manage the Project and the right to demand and collect User Charges from the Users of the Project / Project Site in accordance with the provisions of this Agreement.
- c. Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into agreements with such Persons, as it may deem necessary and appropriate, for performing its obligations under this Agreement.
- d. The Concessionaire may create charge on the rights of this Agreement, in favour of Senior Lenders, only during the Concession Period strictly in accordance with the terms of this Agreement. Provided that the Concessionaire shall provide written intimation to the Concessions Authority along with relevant records of such charge created., which shall be in strict compliance with the provisions of Article 10.1 (c).
- e. During the Concession Period, the Concessionaire shall have exclusive authority to develop, implement, operate the Project accordance with the provisions of this Agreement.

2.2 Acceptance by Concessionaire

In consideration of the rights, privileges and benefits conferred upon by Concessions Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

2.3 Access to Project Site

Within 180 (One Hundred and Eighty) days from the Appointed Date, Concessions Authority shall have provided to for the Concessionaire the Right to the Project Site in accordance with the provisions of Clause 2.5.

2.4 Conditions Precedent

- a. Save and except as may otherwise be expressly provided herein, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent (“**Conditions Precedent**”) as set out in Article 2.4 (b) and Article 2.4 (c) on or before the expiry of a period of 180 (One hundred and Eighty) days from the Appointed Date.
- b. **Conditions Precedent for the Concessions Authority**
The Concessions Authority shall:
 - i. have provided to the Concessionaire the Right of Way to the Project Site in accordance with the provisions of Clause 2.5. It is however clarified that this Conditions Precedent on the part of the Concessions Authority shall be fulfilled at the end, when all other Conditions Precedent of both the Parties are met/fulfilled;
 - ii. Constituted a Design Approval Committee,(DAC) for the approval of DPR and concept and design of the Project, to be developed by the Concessionaire. Concessions Authority must give comments/ observations (if any) to the DPR and concept plan & design submitted by the Concessionaire under Article 2.4(c)(i), within a time period of 20 (twenty) days from the date of its receipt. Failure to do so will be considered deemed approval of the DPR and concept plan by the Concessions Authority;
 - iii. Give approval to the amended concept plan & design within 10 (ten) days from the date of its receipt; and
 - iv. Appoint an Independent Engineer as per the Clause 4.3 of this Agreement.

c. Conditions Precedent for the Concessionaire

The Concessionaire shall have:-

- i. Prepared a DPR and concept plan for the Project and preliminary project cost estimates, including the area statement, block drawings, details of services to be so provided and as incorporated in the DPR and concept plan as per the applicable Local Building Bye laws, Norms of Naya Raipur Development Plan 2031 etc and submit to the Concessioneing Authority for its approval, whereby meeting all the requirements mentioned herein, apart from all other requirements of this Concession Agreement in the DPR and concept plan within a period of 60 days (Sixty days) from the Appointed Date. The Concessionaire shall also be required to submit a copy of the documents and drawings to the Independent Consultant for its review. NRDA shall include the comments and suggestions received from Independent Engineer in the suggestions and amendments given by NRDA to Concessionaire.
- ii. Incorporated the necessary suggestions / amendments proposed by the Concessioneing Authority in its concept plan, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Concessioneing Authority and submit again for approval. It is clarified here that the Concessionaire shall not start the construction until and unless the Authority approves the concept and detailed design of the Project again after carrying out necessary amendments, which shall not be unduly delayed
- iii. Provided the Concessioneing Authority copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Concession Agreement by the Concessionaire. Further provided the Authority copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents of the Concessionaire.
- iv. Delivered to the Concessioneing Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof.
- v. executed and procured execution of the Substitution Agreement.
- vi. executed the Financing Agreements and delivered to the Concessioneing Authority, 3 (three) true copies thereof, duly attested by a Director of the Concessionaire.
- vii. prepared in consultation with the Independent Engineer the Project Implementation Schedule and submit to the Concessioneing Authority.
- viii. provided an undertaking that all of the Representations and Warranties of the Concessionaire are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- ix. submitted safety plans and procedures related to Project.
- x. procured all the Clearances specified in Schedule-7 unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Clearances, as on the date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement, are fulfilled;

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 2.4.c. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder, with such conditions as it may deem fit.

2.4.1 Obligations to Satisfy Conditions Precedent

- i. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated in clause 2.4,a and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- ii. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied. Upon satisfaction in

- full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).
- iii. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Concessions Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession shall commence and whereon the Concessions Authority shall issue the “**Notice to Commence**” to the Concessionaire.
 - iv. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

2.4.2 Non-fulfillment of Conditions Precedent

In the event that

- I. Any of the Conditions Precedents relating to the Concessionaire as set forth in Clause 2.4.c have not been fulfilled within 180 (One Hundred and Eighty) days of the signing of this Agreement and also, the Concessions Authority has not waived them fully or partially,
- II. the delay has not occurred as a result of failure to fulfil the obligations under Clause 2.4.b or other breach of this Agreement by the Authority or due to Force Majeure,
The Concessionaire shall pay to the Concessions Authority damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day’s delay until the fulfillment of such Conditions Precedent, subject to a maximum of 15% (fifteen percent) of the Performance Security. . In the event that the Concessionaire has fulfilled its Conditions Precedent and Concessions Authority has not procured fulfillment of any or all of the Conditions Precedent set forth in Article 2.4 (b) within the period specified in respect thereof, the Concessions Authority shall pay to the Concessionaire damages equivalent to an amount calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day’s delay until the fulfillment of the Condition Precedent, subject to a maximum of 15% (fifteen percent) of the Performance Security.
 - (a) In the event when the maximum damages as above has become payable and the Concessions Authority has still not been able to procure fulfillment of any or all the Conditions Precedent set forth in Article 2.4 (b) and the period for achievement of the same has not been mutually extended then the Concessions Authority shall be liable to return the Concessionaire the Performance Security.
 - (b) In the event the Concessions Authority has terminated this Agreement under Article 2.4.2 (i) due to non-fulfillment of Conditions Precedent by the Concessionaire, the Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees and the Concessions Authority shall forfeit the Performance Security of the Concessionaire In the event that Right of Way to the Project Site has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Concessions Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

Instead of terminating this Agreement as provided in paragraph (a) above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

Without prejudice to the provisions of Clauses 2.4.2.a and 2.4.2.b, the Parties expressly agree that in the event the Compliance Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Compliance Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

2.5 Rights and Use of the Project Site

- i. Pursuant to Article 2.3, the Concessionaire shall have access to the Project Site and to make at its costs, charges and expenses such investigations and development activities (including but not limited to land filling, leveling, clearing, shifting of utilities, landscaping and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project. However, it is being clarified here that in the event of Termination of this Agreement due to non-fulfillment of Conditions Precedent, Concessioneing Authority shall have no liability to make any payment for the activities undertaken by the Concessionaire in the Project Site.
- ii. Same and except as expressly provided under this Agreement, the Concessionaire shall not mortgage, transfer, assign, license or otherwise Encumber the Project Site throughout the Concession Period.
- iii. Subject to the terms of this Agreement, the Concessionaire shall have the right to develop, create, obtain, set up, construct as the context admits or requires, and operate and maintain the Project by itself or through its Contractors.
- iv. The Concessionaire shall have the right to use the Project Site in accordance with the provisions of this Agreement and for this purpose the Concessionaire may regulate the entry and use of the Project Site by the Third Parties.
- v. The Concessionaire shall not without the prior written approval of Concessioneing Authority use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

2.6 Peaceful Possession

The Concessioneing Authority hereby warrants that the Project Site together with the necessary Right of Way

- a. has been acquired through the due process of law; and
- b. belongs to and is vested in Concessioneing Authority and that Concessioneing Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire 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.

2.7 “Concession Period” or “Term” of Concession Agreement

- a. This Agreement shall be valid and binding on the Parties throughout the period commencing from the Compliance Date till the end of 60 (sixty) years and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions of this Agreement.
Provided that in the event of early Termination, the period of Agreement shall be limited to the period commencing from the Compliance Date and ending with the Termination Date.
- b. Upon expiry of the Concession Period as per Article 2.7, the Concessionaire shall peacefully surrender and yield the Project Site and the Project Facility along with Transfer Assets to the Concessioneing Authority in accordance with the provisions of Article 6.6 (Hand back of Transfer Assets).

2.8 Project Milestone

- a. The Concessionaire shall construct the Project in accordance with the Project Milestone Schedule set forth in Schedule – 6 of this Agreement.
- b. On or after the Compliance Date, the Concessionaire shall undertake construction of the Project Facility in conformity with the Specifications and Standards set forth in Schedule-4. The 1825th (One thousand eight hundred and twenty fifth) day (60 months) from the Appointed Date shall be the Scheduled Date of completion for the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Project Facility shall be completed on or before the Scheduled Completion Date.
- c. In the event that any of the Project Milestone is not achieved for any reason other than Force Majeure or reasons attributable to the Concessioneing Authority or any Competent Authority, the

Concessionaire shall, subject to clause below, pay to the Concessing Authority damages for delay beyond the Scheduled Completion Date on which the Construction Completion was due to the extent of 0.05% of the Performance Security per day for every day of delay or part thereof until Project Milestone is achieved. Provided that nothing contained in this paragraph shall be deemed or construed to authorize any delay by the Concessionaire in achieving Project Milestone.

- d. In the event that completion of Project does not occur within 120 (one hundred and twenty) days of Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Concessing Authority or due to Force Majeure, the Concessing Authority shall be entitled to invoke the Performance Security and to terminate this Agreement on account of Concessionaire Event of Default. Provided that instead of terminating the Concession Agreement, the Concessing Authority may at its sole option extend the time for achieving Project Milestone on such terms and conditions as it deem fit in its sole discretion.

2.8.1 Completion Certificate

- i. No later than 30 (thirty) days prior to the likely completion of the Project Facility, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Facility to tests. The date and time of each of the tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessing Authority who may designate its representative to witness the tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.
- ii. All tests shall be conducted at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the tests to determine compliance of the Project Facility with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any test that the performance of the Project Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each test, the Independent Engineer shall provide to the Concessionaire and the Concessing Authority copies of all test data including detailed test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project Facility with Specifications and Standards.
- iii. Upon completion of Project works, and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-10 (the "**Completion Certificate**").
- iv. The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-10 (the "**Provisional Certificate**") if the tests are successful and the Project Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
- v. The Parties hereto expressly agree that a Provisional Certificate under this Clause may, upon request of the Concessionaire to this effect, be issued if the tests undertaken in terms hereof establish that the Project Facility can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 2.8.1.iv.
- vi. All items in the Punch List, shall be completed or rectified, as the case may be, by the Concessionaire within 30 (thirty) days of the date of issue of the Provisional Certificate. Upon

completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in this Clause for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

- vii. The Project Facility shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Clause 2.8.1.iii and 2.8.1.iv respectively and the commercial operation date of the Project Facility shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”)

2.9 Consideration to Concessioneing Authority and Project Lease

2.9.1 Annual Concession Fee

- a. In consideration of the rights, privileges and interests granted by the Concessioneing Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Concessioneing Authority or its nominee / designated recipient an Annual Concession Fee of Rs [insert] (Rupees [insert in words] only).
- b. The Annual Concession Fee shall be increased, by **5% (five percent) every year over the** preceding year Annual Concession Fee.
- c. The first Annual Concession Fee shall be due and payable from the Schedule Completion Date i.e. 61st month, starting from the Appointed Date and accordingly, the Concessionaire shall deposit the Annual Concession Fee 7 (seven) days prior to the same date every year, throughout the Concession Period.
***For Illustration**, if the Schedule Completion Date is 60th month, from the Appointed Date, is 15th April, the Concessionaire shall have to deposit the Annual Concession Fee on or before 8th of April every year during the Concession Period.*
- d. The Annual Concession Fee shall be payable by the Concessionaire to the Concessioneing Authority or its nominee / designated recipient in the form of demand Draft payable at Raipur/Naya Raipur.
- e. In the event of delay up to one week in payment by the Concessionaire, the Concessionaire shall be required to pay the Concessioneing Authority or its nominee / designated recipient interest at the rate of SBI PLR plus 4% per annum. In the case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.
- f. The Concessionaire shall pay service tax and / or any other tax as applicable over and above the Concession Fee to Concessioneing Authority. However, all duties and taxes in consequence of its obligations under this Concession Agreement, including customs and excise duties, advertisement tax, VAT, any cess, levy, duty, tax or charge etc shall be directly borne by the Concessionaire. The Concession Fee shall not be reduced for such costs.
- g. As an incentive for early completion of the project, no concession fees shall be payable by the concessionaire till five years from the appointed date. For avoidance of doubt, the concession fees shall be payable by the concessionaire from the beginning of sixth year from the appointed date irrespective of the fact that the project is completed or not completed within five years from the appointed date.

2.9.2 Project Lease

- a) The project site shall be leased to the concessionaire within 15 (fifteen) days from the compliance date. Till such time the Project Site shall be on license. The cost towards such lease and its registration shall be borne by the Concessionaire..
- b) In consideration of the rights, privileges and interests granted by the Concessioneing Authority to the Concessionaire in terms of this Agreement with respect to Project Site, the Concessionaire shall pay to the Concessioneing Authority or its nominee / designated recipient an Annual Lease Rent.(the“ **Annual Lease Rent**”).

- c) The lease shall be initially for the period of 30 (thirty) years and the same shall be further extendable such that it is co-terminus with the concession period unless this Concession Agreement is terminated due to any Force Majeure event or on account of any reasons solely attributable to the Concessionaire.
- d) the Annual Lease Rent shall be calculated as 2% (two percent) of the upfront premium of Rs. 2 crores payable by the Concessionaire at time of signing of the Concession Agreement for first 30(Thirty) years and the same shall be increased to maximum 100% of the Annual Lease Rent for the balance period, unless this Concession Agreement is terminated due to any Force Majeure event or on account of any reasons solely attributable to the Concessionaire.
- e) The first Annual Lease Rent shall be due and payable from the Compliance Date and accordingly, the Concessionaire shall deposit the Annual Lease Rent 7 (seven) days prior to the starting of the same month every year, throughout the Concession Period.
- f) The Annual Lease Rent shall be payable by the Concessionaire to the Concessions Authority or its nominee / designated recipient in the form of demand Draft payable at Raipur/Naya Raipur.
- g) In the event of delay up to one week in payment by the Concessionaire, the Concessionaire shall be required to pay the Concessions Authority or its nominee / designated recipient interest at the rate of SBI PLR plus 4% per annum. In the case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.
- h) The Concessionaire shall pay service tax and / or any other tax as applicable over and above the Annual Lease Rent to Concessions Authority. However, all duties and taxes in consequence of its obligations under this Concession Agreement, including customs and excise duties, advertisement tax, VAT, any cess, levy, duty, tax or charge etc shall be directly borne by the Concessionaire. The Annual Lease Rent shall not be reduced for such costs.

2.10 User Charges

2.10.1 Collection and appropriation of User Charges

On and from the date of commencement of Commercial Operations of the Project till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate User Charges from the Users of the Project Facilities in accordance with this Agreement.

2.10.2 from the commercial operation date the concessionaire shall have the right to levy the user charges of an amount it may deem reasonable with the approval of Concessions Authority.

ARTICLE 3
OBLIGATIONS OF CONCESSIONAIRE

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

3.1 Project Development

- a. The Concessionaire shall be required to complete the construction of the Project and its related services and facilities as per the Project Milestone defined under Article 2.8 and obtain Completion Certificate.

3.2 Performance Security

- a. For due and punctual performance of its obligations under this Agreement, relating to the Project, the Concessionaire shall deliver to Concessioneing Authority and maintain Performance Security of Rs 2,75,00,000 (Rupees two crore seventy five lakhs) in the form of a Bank Guarantee in favor of CEO, Naya Raipur Development Authority, payable at Raipur/Naya Raipur;the Bank Guarantee shall be prepared and submitted as per the format given in Schedule 2 of this Agreement.
- b. The Performance Security shall be from a scheduled nationalized/commercial bank , payable at Raipur/Naya Raipur.
The Performance Security shall be valid for a period of 12 (twelve) months and shall be renewed every year, at least 30 (thirty) days prior to the date of expiry of the Bank Guarantee. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Concessionaire. 50% (fifty percent) of the Performance Security shall be released to the Concessionaire on COD by the Concessioneing Authority. The Concessionaire undertakes and warrants to Concessioneing Authority that the balance 50% (fifty percent) of bank guarantee furnished as above shall be unconditional and irrevocable and shall continue to be effective and enforceable for 6 (six) months after the expiry of the Concession Period and upon transfer of all Project Facility to the Concessioneing Authority..
- c. Upon occurrence of Concessionaire Event of Default, the Concessioneing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish the Performance Security, in case of partial appropriation, to its original level before such encashment or appropriation of and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Concessioneing Authority a fresh Performance Security as aforesaid, failing which the Concessioneing Authority shall be entitled to terminate this Agreement.
- d. The Performance Security in the form of bank guarantee shall be renewed every year till the end of the Concession Period and transfer of the Project along with the Project Site to NRDA. If the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security shall, subject to the Concessioneing Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

3.3 Financing Arrangement, Payment of Taxes, etc.

- a) The Concessionaire shall at its cost; expenses and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement, within a period of 180 days from the Appointed Date.
- b) The Concessionaire shall pay all duties, taxes, levies, etc. such Import Duties, etc. towards all or any of the equipments, material, furnishings, etc. to be installed in the Project apart from taking any necessary approvals / permissions for the same.
- c) The Concessionaire shall pay at its own cost all applicable, existing and future taxes / charges / fees / levies including any property tax, house tax, luxury tax, service(s) tax, stamp duty, registration charges and / or pay cost of any legal documentation charges, etc. in respect of the said Project / Project Site, as leviable.

3.4 Project Implementation

- a. The Concessionaire shall develop the Project in accordance with the Standards and Specifications as mentioned in Schedule 4 and as per the concept plan of the Project,

- approved by Concessing Authority, within the Project Milestone specified under Article 2.8 or such extended date as may be approved by Concessing Authority.
- b. The Concessionaire shall design the Project Facility as per the building laws / byelaws specified by the local authorities and the Development Plan of Naya Raipur City 2031. The Development Control Norms related to Project Facility are specified in Schedule-4, Annex-1 and Concessionaire shall strictly adhere its construction activity as per these norms. .
 - c. The Concessionaire shall obtain all necessary approvals, permissions and sanctions for setting up of Project and other allied infrastructure and facilities.
 - d. The Concessionaire shall submit “**Structural Safety Certificate**” of the proposed Project Facility from competent, reputed and recognized “**Structural Engineer**” before the commencement of commercial activities. The concessionaire shall also submit the safety certificate from competent authority for each ride installed on the project site.
 - e. The Concessionaire shall adhere to the safe construction parameters and complete the construction works before the Scheduled Completion Date or such extended date as may be approved by Concessing Authority.
 - f. The Concessionaire may undertake construction works and services by itself or through Contractor(s) possessing requisite technical, financial and managerial expertise / capability; but in any case the Concessionaire shall and will remain solely responsible for its overall liabilities and obligations under the contract, overall supervision, monitoring and control of the activities of all the Contractors, sub-contractors, their employees and agents engaged under respective “Project Agreements” as may be necessary.
 - g. For this purpose, Concessionaire shall undertake all necessary activities such as designing, planning, developing, financing, constructing, marketing, operating and maintaining the Project and the Project Site, in accordance with the provisions of this Agreement and as per Good Industry Practice.
 - h. For the purposes of determining whether the construction works are being undertaken as per building laws / bye-laws, development controls, relevant provisions of Indian Standards, National Building Code, etc., the Concessionaire shall with due diligence carry out all necessary and periodical tests. The Concessionaire 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.
 - i. The Concessionaire shall procure and install new, specified and necessary equipments, plant, machinery, apparatus, services and its supporting infrastructure towards the Project. It shall keep all the necessary Project equipments adequately insured and shall pay regular and timely premium, at its own cost.
 - j. In terms with the provisions of this Agreement, the Concessionaire shall make timely payment to Concessing Authority, wherever required and applicable.
 - k. The Concessionaire shall implement and make operational the Project as per the Project Milestone given in Article 2.8.
 - l. The Concessionaire shall submit to the Concessing Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Concessing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Concessing Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.
 - m. The Concessionaire shall ensure that all the Project Agreements, to be entered into with the Third Parties, are co-terminus with the Concession Period/ Term of the Concession Agreement and in case of Termination of this Concession Agreement (either by efflux of time or pre-mature), Concessing Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, arising out of from such Project Agreements, in case they continue to accrue, shall henceforth be accrued / appropriated to the Concessing Authority. It is being clarified here that the similar provision shall be mandatorily incorporated in all the Project Agreements and the signed copy of the Project Agreements shall be submitted to the Concessing Authority for perusal.

- n. The Concessionaire shall provide all machinery, plant and equipment necessary to complete the Works. All Concessionaire's Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.
- o. The Concessionaire shall maintain an adequate inventory of consumable and spare parts, and undertake periodic and preventive maintenance as required for the relevant equipment. The Concessionaire shall ensure continuous workflow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.
- p. The Concessionaire shall replace the broken machinery and equipment immediately after its occurrence and shall bear the entire cost.
- q. The Concessionaire shall be required to mandatorily comply with all the provisions as laid down in the Urban Design Master Plan specified by the local authorities. In case of any deviations, the Concessionaire shall be required to get prior approval from NRDA.
- r. Concessionaire shall follow applicable laws and rules of Government of Chhattisgarh and Government of India regarding water bodies and other environmental aspects.
- s. The Concessionaire shall ensure that no untreated water is let out in the lake.
- t. The Concessionaire shall be prohibited to undertake activities which are mentioned in Schedule 9.

3.5 Operation and Maintenance

- a) The Concessionaire shall operate and maintain the Project Facility in accordance with Good Industry Practice and Applicable Laws. The Concessionaire shall throughout the continuance of this Agreement, have full control and management of Project.
- b) Prior to the start of operations in Project, the Concessionaire would submit to the Concessioneing Authority, an Operations and Maintenance Manual for the Project (“**O&M Manual**”) setting out in detail the standard operating procedures, schedules, periodicity and other details of the operation and maintenance activities to be carried out for the Project. The Concessionaire shall get the Operation and Maintenance Manual approved by the Concessioneing Authority and any amendments thereof.
- c) The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability, provided Concessionaire shall be solely responsible for implementation and operation and maintenance of the Project in accordance with the provisions of this Agreement and it shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner.
- d) The Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the applicable regulations and Applicable Laws. The Concessionaire 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.
- e) The Concessionaire shall be entitled at its own costs, expenses and consequences to perform the following:
 - i. Institution and supervision of operating policies, principles, systems and procedures for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
 - ii. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
 - iii. To issue its receipts and invoice in its own name.
- f) The Concessionaire will take professional indemnity insurance in respect of the negligence of its Project Facility, staff members, employees, executives, Authorities in the operation and management of the Project. The Concessionaire shall throughout the term of this Agreement maintain the professional indemnity insurance and from time to time regularly bear and pay the insurance premium in this regard.
- g) The Concessionaire shall bear and pay all expenses, taxes, due and payable in respect of the operation and management of the Project, including sales tax, VAT where applicable, service tax, luxury tax and the like and will ensure that these are paid in time and no defaults are made

in respect of the same. Further the Concessionaire shall ensure that all returns in this regard are filed before the due date as per Applicable Laws.

- h) The Concessionaire shall not in the operation of the Project do any act or omission which shall be unlawful in nature and throughout the term abide by all the law, rules, orders, regulations and other requirements as applicable for the operation and management of the Project from time to time.
- i) The Concessionaire shall keep and maintain all such books, records and reports as are required to be maintained under Applicable Laws and shall submit or cause to be submitted to appropriate authorities, all information and reports as are legally required.
- j) The Concessionaire shall furnish to the Concessions Authority such information as required by the Concessions Authority with respect to operation and management of the Project.
- k) Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reason whatsoever whether intentionally or unintentionally and the Concessions Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Concessions Authority indemnified in this regard.
- l) The Concessionaire will ensure that the highest service standards and Good Industry Practices in Amusement Parks and Recreational Parks of similar standing will be adopted and followed in the said Project throughout the Concession Period.
- m) In the event the Concessionaire has failed to operate and maintain the Project in accordance with the Good Industry Practices and as per the provisions of this Agreement, a notice to that effect will be issued by Concessions Authority to the Concessionaire. The Concessionaire shall take all steps to address the concerns raised by Concessions Authority in the said notice within reasonable period. If the Concessionaire does not remedy any such breach in the period specified in the notice, it shall be constituted as “**Concessionaire Event of Default**” in terms of the provisions of Article 6.
- n) The Concessionaire may subcontract operations/ operation and maintenance of parts of the Project Facility, provided however, that it shall be obligatory upon the Concessionaire to provide copies of all such Project Agreements entered into from time to time with Third Parties to the Concessions Authority, with incorporated Clauses, in all Project Agreements with such respective Third Parties, that:- (i) the period of the Project Agreement shall be co-terminus with the Term of this Concession Agreement and (ii) in case of Termination of this Concession Agreement (by efflux of time or pre-mature), Concessions Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, arising out from such Project Agreements of the Project Facility, in case they continue to accrue, shall henceforth be accrued / appropriated to the Concessions Authority.
- o) The Concessionaire shall be required to invite representative/s of NRDA, as nominated by NRDA, every year to the General Body Meeting of the Concessionaire.

3.5.1 **Maintenance Programme**

On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- a) preventive maintenance schedule;
- b) arrangements and procedures for carrying out urgent repairs;
- c) criteria to be adopted for deciding maintenance needs;
- d) intervals and procedures for carrying out inspection of all elements of the Project Facility;
- e) intervals at which the Concessionaire shall carry out periodic maintenance;
- f) arrangements and procedures for carrying out safety related measures;
- g) intervals for major maintenance works and the scope thereof; and

h) intervals for carrying out intermediate and periodic overhaul of the equipment.

Provided that the Maintenance Programme shall not schedule any closure or overhaul at any time during the period of May & June of any Accounting Year.

3.5.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Concessions Authority shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

3.5.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 3.5.1 and 3.5.2 shall apply *mutatis mutandis* to such modifications.

3.5.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 3.5.5 or as notified to the Authority shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”).

3.5.5 Major Overhaul

The Concessionaire may, as and when necessary, undertake Major Overhaul of a Project Facility, but in no case more than once in every 2 (two) years, in accordance with a schedule to be notified by the Concessionaire to the Authority, at least 1 (one) year in advance, and requiring the Authority to notify such overhaul for the user of the Project Facility prior to the scheduled date of commencement of Major Overhaul. Provided that a Major Overhaul shall not be scheduled during the period of May & June of any Accounting Year. For the avoidance of doubt, unless the Parties mutually agree, not more than 1 (one) ride of each category (wet, Dry & Iconic) shall be subjected to a Major Overhaul during the course of an Accounting Year. A Major Overhaul period shall not be more than 30 days of any Accounting Year. Failure to comply with the provision of Clause 3.5.5, the Concessionaire shall be liable to pay 0.1% (point zero one percent) of the Performance Security for each day of delay or after 30 days, subject to maximum 30 days. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 3.5.5, in the event that Major Overhaul cannot be completed, for any reason whatsoever, within the period set forth in Clause 3.5.5 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

3.5.6 Minor Overhaul

Any maintenance, repair or rectification of the Project Facility not forming part of Major Overhaul shall be deemed to be Minor Overhaul (the “**Minor Overhaul**”). Any Minor Maintenance shall be carried out by the Concessionaire during Non working hours of the Project Facility. For the avoidance of doubt, unless the Parties mutually agree, not more than 1 (one) ride of any category (wet, Dry & Iconic) shall be subjected to a Minor Overhaul during the course of a particular month of an Accounting Year. In the event of such minor repairs could not be done due to any reason the Concessionaire shall notify the Concessions Authority during the same day. The Concessions Authority may extend Minor Maintenance period by 3 days subjected to maximum 5 (five) days. Failure to comply with the provision of Clause 3.5.6, the Concessionaire shall be liable to pay 0.1% (point zero one percent) of the Performance Security for each day of delay or after 5 days, subject to maximum 30 days. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 3.5.6, in the event that Minor Overhaul cannot be completed, for any reason whatsoever, within the period set forth in Clause 3.5.6 or the extended period provided there under, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

3.5.7 Safety, Breakdowns and Accidents

i. The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled

entities/enterprises, and User of the Project Facility against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, arising out of any accident.

- ii. The Concessionaire shall ensure safe conditions for the Authority and Users, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- iii. The Concessionaire's responsibility for rescue operations on the Project Facility shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the safe operations of the Project Facility.

3.6 Minimum Equity Requirement (Concessionaire Shareholding)

- a) At the time of signing of Concession Agreement the aggregate paid up and subscribed equity of the SPV of all the consortium member shall be 100%. The Lead Member shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV during the Lock-in-Period (i.e till 5 years from the date of Commercial Operation (COD) of the project such that the a aggregate direct equity shareholding of all the members of the consortium is 74%. However after the lock in period the aggregate direct equity shareholding of all the members of the consortium shall be 51% and shall remain so through out the entire concession period with the condition that at all times during the pendency of Concession Period the Lead Member shall hold atleast 26% of the paid up and subscribed equity capital of the Concessionaire SPV.
- b) At no stage shall any change in the Equity Components / shareholding patterns be made by the Consortium Members or by any of the Associates without obtaining prior approval from Concessioning Authority. On an application made for the purpose, Concessioning Authority may permit the change of equity components / shareholding patterns, provided that the Concessioning Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Concessioning Authority. However, no such change in the equity components / shareholding pattern shall be permitted by Concessioning Authority, which would make the Consortium members non-compliant with Articles 3.6(a) above.
- c) In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Concessioning Authority. In the event of non-compliance of Article 3.6 (a) above, the same shall be construed as Concessionaire Event of Default, and the Concessioning Authority shall be entitled to terminate this Agreement in accordance with Article 6.

3.7 Insurance

- a) At all times during the period of this Agreement, Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Site and Project Facility in accordance with the Good Industry Practice, as required under the Financing Documents ("**Insurance Cover**").
- b) All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 3.7 (a) shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Concessioning Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

3.8 Environmental Clearances and Compliance

At all times, Concessionaire shall obtain the requisite Environmental Clearances from the appropriate authorities and shall also ensure that the processes employed in the construction, operation and maintenance thereof, for the Project is in compliance to the Applicable Laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

3.9 General Obligations

The Concessionaire shall:

- a. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- b. at all times, to afford access to the Project Site to the authorized representatives of Concessioning Authority, Senior Lenders, other persons duly authorized by any Governmental Agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice.
- c. perform and fulfill its obligations under the Financing Documents.
- d. 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 Concessioning Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall Concessioning Authority be treated as employer in this regard;
- e. make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits from time to time;
- f. ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- g. pay all taxes, duties, levies and outgoings, including utility charges relating to the Project;
- h. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- i. transfer the Project to the Concessioning Authority in fully operational and functional condition upon termination of this Agreement, in accordance with the provisions thereof.
- j. Ensure that the quality of treated affluent solid waste, emissions etc., conform to the standards laid down by the Competent Authorities.

3.10 No Breach of Obligations

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

- a. Force Majeure Event, subject to Article 5.3;
- b. Concessioning Authority Event of Default;
- c. Compliance with the directions of any Government Agency, other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder; and
- d. Closure of the Project or part thereof with the approval of the Concessioning Authority.

3.11 Quarterly Progress Report

The Concessionaire shall prepare and submit report in each quarter on the progress of construction (the "**Quarterly Progress Report**") to the Concessioning Authority. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. Reports shall be submitted quarterly thereafter, each within 7 (seven) days of the last day of the period to which it relates. Reporting shall continue until the Concessionaire has completed all the Works, services, facilities and the Construction Completion Certificate is issued. Each report shall include:-

- (i) An executive summary of activities completed and under progress;
- (ii) For the construction of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity;

Furnishing and equipment of the Project Facility as ordered, as received, as installed, in the process of installation, testing and commissioning;

ARTICLE 4
OBLIGATIONS OF CONCESSIONING AUTHORITY

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

- (a) Any claims, liabilities and litigations arising out of in providing the Project Site free of Encumbrances, prior to the date of issue of Notice to Commence, shall be borne solely by the Concessioning Authority and it shall indemnify the Concessionaire and shall hold it harmless from any such liabilities that may arise as a result of any such transfer of the Project Site.
- (b) To facilitate the Concessionaire in getting all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek under this Agreement in connection with development of the Project and the performance of its obligations hereunder;
- (c) Upon written request from the Concessionaire, facilitate the Concessionaire in obtaining necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities / utilities; and
- (d) The Concessioning Authority shall provide all the off-site infrastructure and utilities including approach road, water supply, sewerage, drainage, electricity till the boundary of the project.
- (e) The Concessioning Authority shall provide to the Concessionaire Right of Way to the Project Site within 180 days from the Appointed Date. Failure to do so, for any reason other than Concessionaire Event of Default, shall constitute an event of default by Concessioning Authority ("**Concessioning Authority Event of Default**").
- (f) Upon written request from the Concessionaire, provide reasonable facilitation to the Concessionaire for the purpose of discharging its obligations under this Agreement by the Concessionaire
- (g) The Concessioning Authority, through itself, or its nominee may undertake the overall monitoring of the Project Facility during the construction and operation & maintenance period, to verify the structural safety aspects of the Project Facility throughout the Concession Period.

4.2 Grant of Rights:-

- a. The Concessioning Authority has a right to appoint a person specializing in any area as required, for review during the operation and maintenance of the project. Such persons shall act as an "Experts", whose expert professional opinion, once conformed shall be binding on the parties.
- b. The Concessioning Authority at its own discretion shall appoint or revoke the appointment of such Expert, at any point of time.

4.3 Independent Engineer

- a. The Concessioning Authority shall appoint a person to be the Independent Engineer under this Agreement (the "**Independent Engineer** "). The appointment shall be made not later than 180 (one hundred eighty) days from Appointed Date for a period of 1 (one) year, for a period starting from the beginning of Construction Period till 6 (six) months from the COD. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint person to be the Independent Engineer for a term of 1 (one) year, atleast 30 (thirty) days before such Termination and such procedure shall be repeated after expiry of each appointment.
- b. The roles and functions of Independent Engineer shall be as mentioned in Schedule 8.
- c. The Independent Engineer shall submit regular periodic reports (atleast once every quarter) to Concessioning Authority.

- d. The remuneration, cost and expenses of the Independent Engineer shall be paid by the NRDA.
- e. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the NRDA and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the NRDA shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the NRDA and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent is terminated hereunder, NRDA shall appoint forthwith another Independent in accordance with Clause 4.3.
- f. If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 5 FORCE MAJEURE

5.1 Force Majeure Event

5.1.1 Force Majeure Event shall mean an event which:

- (a) Is beyond the control of the Party claiming to be affected thereby (the "Affected Party");
- (b) Prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- (c) The Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

5.2 Force Majeure Period

The period commencing from the date of occurrence of a Force Majeure Event and ending on the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations.

5.3 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 Article 5.2;
- (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 as a result of the Force Majeure Event and to restore the Project Facility, 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 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; and
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, 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.

5.4 Consequences of Force Majeure event

In the case of Force Majeure event, the Concession Period shall be extended by the period of Force Majeure event, with the maximum extension of Concession Period being limited to 1 (one) year. In case, the Force majeure event takes place before the Scheduled Completion Date, the Construction Period shall also be extended by the period of Force Majeure event, with the maximum extension of Concession Period being limited to 1 (one) year.

5.5 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.

5.6 Change in Law

5.6.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 5 lakh (Rupees five lakh) in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial

position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 5.6.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

5.6.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 5 lakh (Rupees five lakh) in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified there into the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 5.6.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

5.6.3 Protection of NPV

Pursuant to the provisions of Clauses 5.6.1 and 5.6.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

5.6.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Clause 5.1.1, 5.6.2 and 5.6.3 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

5.6.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 6
EVENTS OF DEFAULT AND TERMINATION

6.1 Events of Default

Events of Default shall mean either Concessionaire Event of Default or Concessioneing Authority Event of Default or both as the context may admit or requires.

a. Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of one or more reasons set out in Article 5.1.1:-

- i. The Concessionaire has failed to achieve Project Milestone and obtain Completion Certificate, within the time period laid down in Article 2.8;
- ii. The Concessionaire has failed to pay the Annual Concession Fee and Annual Lease Rent.
- iii. The Concessionaire has failed to comply with the Applicable Laws / Applicable Permits or any Rules and such failure has resulted in a Material Breach of the Agreement;
- iv. The Concessionaire has failed to implement the Project in accordance with the provisions of this Agreement and such failure, in the reasonable estimation of Concessioneing Authority, is likely to delay achieving Scheduled Completion Date.
- v. The Concessionaire's failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- vi. The Concessionaire has failed to make any payments due to Concessioneing Authority and more than four weeks have elapsed since such payment became due;
- vii. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 120 days;
- viii. Any representation made or warranty as given by the Concessionaire under this Agreement is found to be false or misleading;
- ix. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up of the Concessionaire;
- x. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire 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 Concessioneing Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- xi. A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xii. The Concessionaire has abandoned the Project for the consecutive period of 3 (three) months;
- xiii. The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xiv. The Concessionaire has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 120 days.
- xv. The Concessionaire has created encumbrance(s) beyond the Concession Period / Term of this Concession Agreement and in violation of the provisions herein in this regard.
- xvi. the Punch List items have not been completed within the period set forth in Clause 2.8.1.iv.

- xvii. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be.
- xviii. a Change in Ownership has occurred in breach of the provisions of Clause 3.6.

b. **Concessioneing Authority Event of Default**

Failure of Concessioneing Authority to provide Right of Way to the Project Site within 180 (One Hundred and Eighty) days of execution of this Agreement for any reason other than Concessioneing Authority Event of Default shall constitute an event of default by Concessioneing Authority ("**Concessioneing Authority Event of Default**").

6.2 Termination due to Event of Default

a. **Termination for Concessioneing Authority Event of Default**

- i. Without prejudice to any other right or remedy which Concessioneing Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessioneing Authority Event of Default, Concessioneing Authority shall be entitled to terminate this Agreement in the manner as set out under Article 6.2(a)(ii) and Article 6.2(a)(iii).
- ii. If Concessioneing Authority decides to terminate this Agreement pursuant to preceding (i), it shall in the first instance issue "**Preliminary Notice to Remedy**" to the Concessioneing Authority and within 30 (Thirty) days of receipt of the Preliminary Notice to Remedy, the Concessioneing Authority shall submit to Concessioneing Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessioneing Authority's Proposal to Rectify**"). In case of non-submission of the Concessioneing Authority's Proposal to Rectify within the said period of 30 (Thirty) days, the Concessioneing Authority shall be entitled to terminate this Agreement by issuing the Termination Notice.
- iii. If the Concessioneing Authority's Proposal to Rectify is submitted within the period stipulated therefore, the Concessioneing Authority shall have further period of 90 (Ninety) days ("**Cure Period**") to remedy / cure the underlying Event of Default. If, however the Concessioneing Authority fails to remedy / cure the underlying Event of Default within such further period allowed, Concessioneing Authority shall be entitled to terminate this Agreement by issuing the Termination Notice.

b. **Termination for Concessioneing Authority Event of Default**

- i. Without prejudice to any other right or remedy which the Concessioneing Authority may have in respect thereof under this Agreement, upon the occurrence of Concessioneing Authority Event of Default, the Concessioneing Authority shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessioneing Authority decides to terminate this Agreement pursuant to preceding the above Clause (i), it shall in the first instance issue Preliminary Notice to Remedy to the Concessioneing Authority. Within 30 (Thirty) days of receipt of Preliminary Notice to Remedy, to Concessioneing Authority shall forward to the Concessioneing Authority its proposal to remedy / cure the underlying Event of Default (the "**Concessioneing Authority Proposal to Rectify**"). In case of non-submission of Concessioneing Authority Proposal to Rectify within the said period of 30 (Thirty) days, Concessioneing Authority shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If Concessioneing Authority Proposal to Rectify is forwarded to the Concessioneing Authority within the period stipulated thereof, Concessioneing Authority shall have further period of 90 (Ninety) days to remedy / cure the underlying Event of Default. If, however Concessioneing Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessioneing Authority 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 6.2 (a) or 6.2(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; 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 Facility;
- ii. The Project Facility and Project Site shall be transferred to the Concessions Authority by the Concessionaire on the Termination Date, free from all Encumbrances, as per the provisions of Clause 6.6 (Handback of Transfer Assets) of this Agreement.
- iii. The Termination Payment, if any, payable by either Party in accordance with the following sub clause (f) is paid to the Other Party on the Termination Date.

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 Concessionaire Event of Default, prior to the Scheduled Completion Date, Concessions Authority shall retain payments, if any, already received from the Concessionaire and forfeit the Performance Security.
- (II) Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessions Authority shall not make any payments to the Concessionaire. In addition, Concessions Authority shall also be entitled to forfeit and retain the Performance Security, if subsisting.
- (III) Upon Termination of this Agreement on account of Concessions Authority Event of Default, Concessions Authority shall be liable to pay compensation which shall be the lower of:

- a. The Aggregate Depreciated Historic Cost (DHC) as defined in Schedule 11, as determined by Independent Engineer, being a reputed valuer of net value of (i) tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project, which in the reasonable judgement of the said expert are capable of being put to use / utilized by the NRDA and (ii) the moveable assets which the NRDA agrees to take over LESS any amount due to NRDA from Concessionaire under this Agreement and the insurance claims claimed or received.

OR

- b. Debt Dues

- (IV) All payments due to the Concessionaire as calculated under Article 6.2 (f) shall be made within 30 (thirty) days of expiry of the time provided to Concessions Authority to rectify the Concessions Authority Event of Default.

6.3 Rights of Concessing Authority on Termination

Upon Termination of this Agreement for any reason whatsoever, Concessing Authority shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:

- a. Enter upon and take possession and control of the Project Facility and Project Site forthwith as per the provisions of Clause 6.6 (Handback of Transfer Assets) of this Agreement.
- b. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Facility and Project Site;
- c. Notwithstanding anything contained in this Agreement, Concessing Authority 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 regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the transfer of the Project Site and Project Facility by the Concessionaire to Concessing Authority shall be free from any such obligation.

6.4 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 monetary damages and other rights and remedies which it may have under 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.

6.5 Expiry of "Term" of Concession Agreement

At the end of the Term of Concession Agreement as per Article 2.7, the Concessing Authority would either run the Project Facility itself or offer it for private sector participation.

6.6 Handback of Transfer Assets

Upon Termination of this Agreement for any reason whatsoever or the Expiry of Term of Concession Agreement as mentioned under Article 6.5 and consequent obligation of Concessionaire hand over "**Transfer Assets**" to the Concessing Authority the Concessionaire shall ensure that on the Transfer Date its interest in:

- (i) All Movable Assets, movable property, stocks, materials, vehicles and spares relating to Transfer Assets shall be transferred to Concessing Authority or its nominee, clear of any Encumbrances and with good title;
- (ii) All assets, duly certified by the concerned regulatory / licensing / accreditation / rating agency, as given below:
 - a. Structural Safety Certificate of the Project Facility from competent, reputed and recognized Structural Engineer
Shall be transferred to Concessing Authority or its nominee, clear of Encumbrances and with good title;
- (iii) All immovable property, assets, structures, buildings, services, furnishings, edifices, court-areas, ways, walls, compounds relating to Transfer Assets shall be transferred to Concessing Authority or its nominee, clear of all Encumbrances and with good title;
- (iv) The rights and obligations under or pursuant to all contracts relating to Transfer Assets and other arrangements entered into in accordance with the provisions of this Agreement between Concessionaire and any third party shall (in consideration of Concessing Authority's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in Concessing Authority or its nominee, clear of all Encumbrances and with good title; and
- (v) Notwithstanding anything contained in Article 6.6 (i),(ii), (iii) and (iv), prior to any transfer of the Transfer Assets, Concessing Authority, shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Concessing Authority are unreasonably onerous, and would be considered onerous at the

time that the contracts were entered into. In relation to all such contracts that are not transferred to Concessioning Authority, no third Entity, including the counter-party of such contract shall have any right, license, title, interest, benefit, claim or demand against or over any Asset and such Transfer Asset shall be transferred to Concessioning Authority or its nominee, free from all Encumbrances and with good title.

- (vi) Furthermore, notwithstanding anything contained in the Article 11.1 no liability (accrued or contingent) of Concessionaire or relating to the Project Facility arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Concessioning Authority or its nominees. The Concessioning Authority or its nominees shall not be liable for liabilities in relation to the Project arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to Concessioning Authority or its nominee or any Encumbrance existing on any of the Transfer Assets, the quantum of such liability and / or amount corresponding to such Encumbrance, shall be compensated by Concessionaire to Concessioning Authority.
- (vii) Without prejudice to the foregoing, Concessionaire agrees to indemnify and keep indemnified the Concessioning Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Concessioning Authority as a result of any actions or omissions of the Concessionaire prior to the transfer of the Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
- (viii) **Vesting Certificate:** Handback of Transfer Assets is deemed to be complete on the date when all the requirements under Article 6.6 have been fulfilled by the Concessionaire, and the Concessioning Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-3 (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Concessioning Authority pursuant hereto. It is expressly agreed that the issue of Vesting Certificate shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessioning Authority or its nominee on, or in respect of, the Project on the footing that all requirements under this Agreement have been complied with by the Concessionaire. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the Concessioning Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Concessioning Authority.

ARTICLE - 7
DISPUTE RESOLUTION

7.1 Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Sub-article 7.1 (b) below.
- b. Either Party may require such Dispute to be referred to the Chairman of NRDA and Chairman of Board of Directors of the Concessionaire, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any case within 30 (Thirty) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within 30 (Thirty) days of such meeting or such longer period as may be mutually agreed by the Parties. If the Dispute is not amicably settled within 30 (Thirty) days (or such longer mutually agreed period) of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 7.2 below.

7.2 Arbitration

a. **Procedure**

Subject to the provisions of Article 7.1, any dispute, which is not resolved amicably, shall be finally decided by reference to arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act.

b. **Place of Arbitration**

The place of arbitration shall be Raipur only and the jurisdiction of the Courts of Raipur shall prevail.

c. **English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards 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**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

e. **Performance during Arbitration**

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

7.3 Adjudication by Regulatory Authority

In the event of the constitution of a statutory Regulatory Authority with powers to adjudicate upon Disputes between the Concessionaire and the Concessions Authority, then instead of reference to Arbitration under Article 7.2, such Regulatory Authority shall adjudicate upon all Disputes arising out after its constitution, in accordance with the Applicable Laws.

ARTICLE 8
FINANCING AND LENDER'S RIGHTS

8.1 The Concessioneing Authority hereby agrees that it shall enter into a Substitution Agreement, as given in Schedule 5, with the Senior Lender and the Concessionaire thereby shall grant the Senior Lender certain rights in the event of "Termination for Concessionaire Event of Default" as set out in Article 6.2 (a). The Concessioneing Authority further confirms to the Concessionaire that it can represent to the Senior Lenders that the Concessioneing Authority has agreed to be bound by the terms and conditions specified therein.

8.2 At any time after the Lenders' Representative (defined under Substitution Agreement) have issued a Notice of Financial Default of the Concessionaire, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project on its own or through a Third Party. Upon receipt of such notice, the Concessioneing Authority may, at its discretion, undertake the operation of the Project during such "**Suspension**" period. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company (defined under Substitution Agreement), and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of this Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

8.3 Assignment and Charges

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of Concessioneing Authority.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement.
- c. Restraint set forth in Sub-articles 8.3(a) and 8.3(b) above, shall not apply to:
 - i. Assignment of Concessionaire's rights and benefits under this Agreement and other Project related Financial Documents to or in favour of the Senior Lenders as security for Financial Assistance provided by them.

Notwithstanding anything contained in Article 8.3(c) the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to Transfer of Assets contained under Article 6.6.

8.4 Audit and Account

a. Appointment of Auditors

- i The Concessionaire shall appoint and have during the subsistence of this Agreement, as its statutory auditors, a reputed firm of chartered accountants duly licensed to practice in India. All fees and expenses of the statutory auditors shall be borne by the Concessionaire.
- ii Any claim or document provided by the Concessionaire to the NRDA relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Concessionaire's statutory auditors.

b. Maintenance of Accounts

The Concessionaire shall, during the subsistence of this Agreement, maintain books of account recording all its receipts from all sources derived or on account of the Project, income, expenditure, and payments (including payments from the Escrow Account); and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Concessionaire shall provide the NRDA 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Accounting Year to which they pertain.

The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information which is necessary to verify costs and expenses incurred or revenues earned and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the NRDA within five days of the end of each

month.

8.5 ESCROW ACCOUNT

a. Opening of Account

The Concessionaire shall, prior to Financial Closure, open and establish an Escrow Account with the Escrow Bank. All inflows and outflows of cash and receivables on account of capital, revenue, expenditure or otherwise that accrue or arise under, in connection with or pursuant to the implementation and operation of the Project under this Agreement shall be credited to or debited from, as the case may be, the Escrow Account.

b. Deposits into Account

Without limiting the generality of the foregoing, all receivables under or pursuant to the Transaction Documents (including without limitation Financial Assistance provided by the Lenders, the equity contributions, Tariff, compensation payable by the NRDA upon termination of this Agreement, commercial area units including Shops and other related monies, if any, the lump sum maintenance fee, all proceeds received pursuant to insurance claims, all monies received from any other source in relation to or in respect of the Project and all interest, if any, on the balances in the Escrow Account and interest or income received on account of investments, if any, of such balances as may be permitted by the Lenders /NRDA shall be credited to or deposited in the Escrow Account.

c. Withdrawals from Account

The Escrow Bank shall withdraw amounts from the Escrow Account and appropriate the same in the following order every month and deposit in the relevant sub-account for payments and if not due in a month then appropriate proportionately in such month and retain in the sub-account and pay out there from on the stipulated payment date(s). The Escrow Bank shall withdraw amounts from the Escrow Account and appropriate the same in the following order every month and deposit in the relevant sub-account for payments and if not due in a month then appropriate proportionately in such month and retain in the sub-account and pay out there from on the stipulated payment date(s):

- i All taxes due and payable by the Concessionaire;
- ii Any payments and damages due and payable by the Concessionaire to the NRDA pursuant to this Agreement
- iii All expenses in connection with and relevant to the construction of Project (interalia design, engineering, procurement and construction) by way of payment to the relevant Contractors, subject to and in accordance with the (A) conditions, if any, set forth in the Financing Documents; and (B) the payment disbursement schedule for Concessionaire that shall be linked to Project Progress ;
- iv Monthly proportionate provision of debt service payments pursuant to the Financing Documents due in an Accounting Year and payment of debt service in the month when due;
- v any reserve requirements set forth in the Financing Documents and the Project
- vi Subject to the provisions of this Agreement, the balance in accordance with the instructions of the Concessionaire.

Provided in the event the Lenders /NRDA notify the Escrow Bank of a Concessionaire Event of Default or Force Majeure Event, the Escrow Bank shall not make any payments from the Escrow Account to the accounts of the Concessionaire. Provided further that the payments to the accounts of the Concessionaire shall always be made only in accordance with the payment disbursement schedule for Concessionaire that shall be linked to achievement of Project Milestones within the Milestone Dates by the Concessionaire, as certified by the Independent Engineer.

d. Withdrawals upon Termination/Expiry of Agreement

Upon the earlier of

- i Issue of Termination Notice;
- ii Termination/determination of this Agreement; or
- iii The expiry of the Concession Period

all amounts standing to the credit of the Escrow Account shall be appropriated and dealt with in them following order:-

- i All taxes due and payable by the Concessionaire;
- ii Any payments and damages due and payable to the NRDA in terms of this Agreement;
- iii All accrued maintenance expenses;
- iv All accrued debt service payments pursuant to the Financing Documents;

- v Any other payments required to be made under this Agreement;
and
- vi Subject to the provisions of this Agreement, the balance, if any, on the instructions of the Concessionaire.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to Concessioneing Authority that:

- a. it is duly organized, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement 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. along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Concession Agreement;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Concession Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- f. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder
- g. the information furnished in the bid / proposal and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- h. 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 Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- i. there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- j. 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;
- k. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 3.6 of this Concession Agreement;
- l. 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 on its ability to perform its obligations under this Agreement;
- m. subject to receipt by the Concessionaire from Concessioneing Authority 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 Concessionaire in and to the Project Site and Project Facility shall pass to and vest in Concessioneing Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or Concessioneing Authority;
- n. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to Concessioneing Authority 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;
- o. all its rights and interests of the Project Facility shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or

deed on its part or that of the Concessing Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Concession Agreement

- p. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith and
- q. Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by Concessing Authority, 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 Concessionaire in the course of performance of its obligations hereunder.

The Concessionaire 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 Concessing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire

9.2 Representations and Warranties of Concessing Authority

Concessing Authority represents and warrants to the Concessionaire that:

- a. Concessing Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- b. This Agreement constitutes Concessing Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- c. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement
- d. It has a good and valid right over the Project Site and has power and authority to grant Concession in respect thereto to the Concessionaire; and
- e. Upon the Concessionaire paying the Annual Concession Fee, Annual Lease Rent and performing the covenants herein, it shall not at any time during the Term hereof, interfere with peaceful exercise of the rights and discharge of its obligations by the Concessionaire, in accordance with this Agreement.

9.3 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.

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

**ARTICLE 10
MISCELLANEOUS**

10.1 Assignment and Charges

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of Concessioneing Authority.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement.
- c. Restraint set forth in Sub-articles 10.1(a) and 10.1(b) above, shall not apply to:
 - ii. Assignment of Concessionaire's rights and benefits under this Agreement and other Project related Financial Documents to or in favour of the Senior Lenders as security for Financial Assistance provided by them.

Notwithstanding anything contained in Article 10.1 (c) the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to Transfer of Assets contained under Article 6.6.

10.2 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 @ SBI PLR as on 1st January 2015+ 4% 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 10.2 shall neither be deemed nor 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.

10.3 Governing Law and Jurisdiction

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

10.4 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.

10.5 Survival

Termination of this Agreement:

- a. shall not relieve the Concessionaire or Concessioneing Authority 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.

10.6 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 both the Parties hereto and evidenced in writing.

10.7 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 Concessioneing Authority:

**Chief Executive Officer,
Naya Raipur Development Authority,
1st Floor Utility Block Capital
Complex Sector-19, Naya Raipur 492002
Chhattisgarh
Tel: +91-771-4066227
Email: ceo@nayaraipur.com**

If to the CONCESSIONAIRE:

The Managing Director,

“ _____ ”

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.

- a. 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
- b. In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

10.8 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.

10.9 No Partnership

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

10.10 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.

10.11 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.

10.12 Counterparts

This Agreement may be executed in 2 counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

10.13 General Liability and Indemnity

- a. The Concessionaire shall indemnify, defend and hold Concessioneing Authority harmless against any and all proceedings, actions and Third Party claims arising out of a breach by Concessionaire and its contractors, sub-contractors, agents, employees and Users of the Project Facilityetc. of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by Concessioneing Authority of any of its obligations under this Agreement.
- b. The Concessioneing Authority shall, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, Third Party claims for loss, damage and expense of whatever kind and nature arising out of breach by Concessioneing Authority, its officers, servants and agents of any obligations of Concessioneing Authority under this Agreement except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

Signed, Sealed And Delivered
For and on behalf of
Naya Raipur Development Authority,
Raipur/Naya Raipur by:
(Signature)
(Name)
(Designation)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof^s:
(Signature)
(Name)
(Designation)

Countersigned, Sealed and Delivered
For and on behalf of
Naya Raipur Development Authority
(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

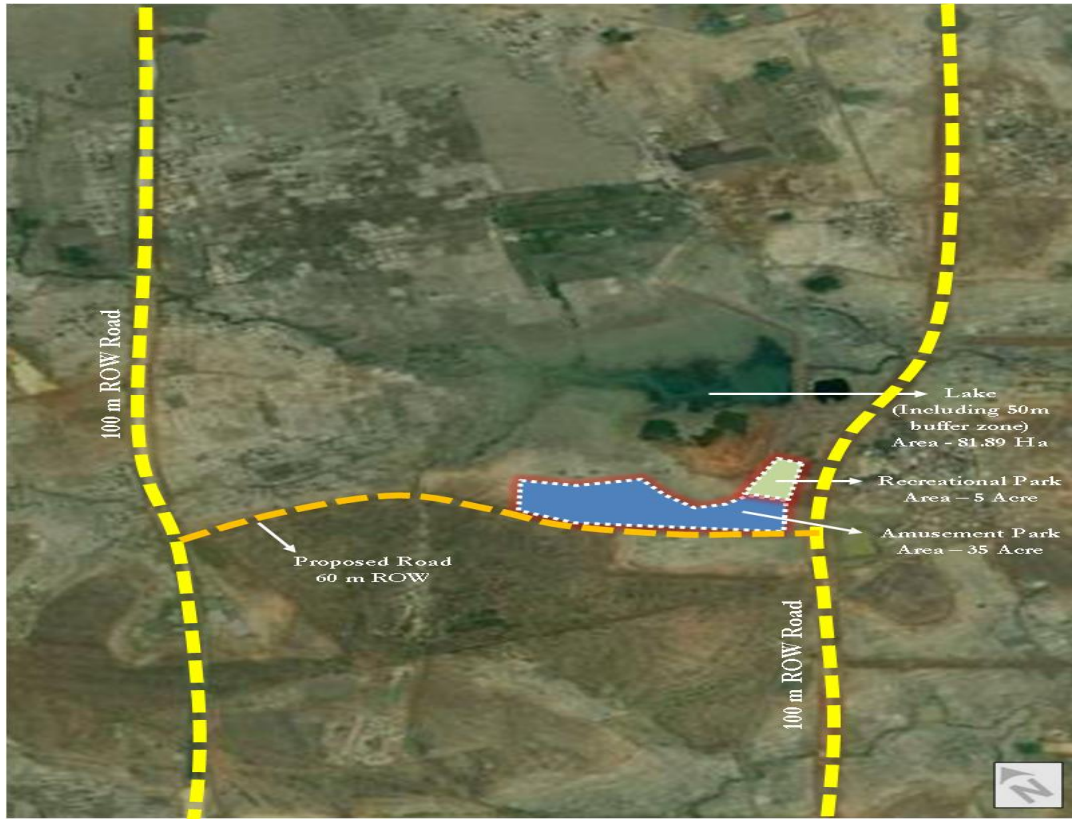
In the presence of:
(Signature)
(Name)
(Designation)

In the presence of:
(Signature)
(Name)
(Designation)

^s To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE - 1
PROJECT SITE INCLUDING DETAILS THEREOF
(see Article 1.1)

Project Site is in the city of Naya Raipur. The land parcel for development of Project is approximately 2,20,507.14 sq m (~54.49 Acres) as shown in map given below



SCHEDULE 2
(See Article 3.2)
FORMAT OF PERFORMANCE SECURITY
(BANK GUARANTEE)¹

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.: _____

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(Hereinafter referred to as the “**Bank**”)

Beneficiary of Bank Guarantee:

CEO, Naya Raipur Development Authority

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance in respect of Concession Agreement (hereinafter referred to as the “**Agreement**”) to be entered between the Naya Raipur Development Authority (hereinafter referred to as the “**NRDA**” or “**Concessions Authority**”) and _____ (hereinafter referred to as the “**Concessionaire**”) for the Development of Amusement and Recreational Park on Public Private Partnership (PPP) basis at Naya Raipur, Chhattisgarh (hereinafter referred to as the “**Project**”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “**Performance Bank Guarantee**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), having its branch at Raipur, hereinafter referred to as the (“**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the NRDA i.e. the beneficiary on behalf of the Concessionaire, up to a total sum of Rs. 2,75,00,000 (Rupees two crore seventy five lacs Only), such sum being payable by us to NRDA immediately upon receipt of first written demand from the NRDA.
2. We unconditionally and irrevocably undertake to pay to the NRDA on an immediate basis, upon receipt of first written demand from the NRDA and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the NRDA to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. 2,75,00,000 (Rupees two crore seventy five lacs Only).
3. We hereby waive the necessity of the NRDA demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the NRDA that the NRDA shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the NRDA by invocation of this Guarantee.

¹ To be issued by a Scheduled Nationalized Bank in India

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency / validity period, except with the previous written consent of the NRDA.
6. We unconditionally and irrevocably undertake to pay to the NRDA, any amount so demanded not exceeding Rs. 2,75,00,000 (Rupees two crore seventy five lacs Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the NRDA, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs.2,75,00,000 (Rupees two crore seventy five lacs Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the NRDA serves upon us a written claim or demand on or before _____.

Authorized Signatory
For Bank

SCHEDULE 3

VESTING CERTIFICATE

(See Article 6.6 (viii))

1. The Naya Raipur Development Authority (the "**Concessing Authority**") refers to the Concession Agreement dated *** (the "**Agreement**") entered into between the Concessing Authority and **** (the "**Concessionaire**") for development of the Project under ("**DBFOT**") basis.
2. The Concessing Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the requirements set forth in Article 6.6 of the Agreement on the basis that upon issue of this Vesting Certificate, the Concessing Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the requirements under the Agreement and/or relieving the Concessionaire in any manner of the same
Signed this *** day of **, 20** at [***].

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of

CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

CONCESSIONING AUTHORITY by

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

SCHEDULE 4
PROJECT FACILITIES, STANDARDS & SPECIFICATIONS
(See Articles, 3.4)

The Concessionaire shall design, develop, operate and maintain the Project Facility in accordance with the conditions as specified herein.

The Concessionaire shall be required to construct, on the Project Site, the following:

1. AMUSEMENT PARK

The Concessionaire shall be required to construct the Amusement Park consist of the following mandatory components:

- **Common Developments**
Site Development (54.49 acre)
 - Common Physical Infrastructure including road/ pathways, water supply, sewerage, drainage, electricity and telecommunications with all arrangements complete
 - Common Utilities
 - Landscaping and greenery
- **Amusement Park & Recreational Complex**
Amusement Rides(Including but not Limited to)
 - ✓ Minimum 5 wet rides and 10 Dry rides catering to a mix of audiences(kids, family and thrill rides) including 2iconic rides (like roller coaster, scream machines and equivalent rides).
- **Recreational Complex (Including but not Limited to)**
 - ✓ An indoor arcade with features such as console games, bowling alley, pool tables, bumping cars, etc.
 - ✓ Retail and F&B outlets(food court)

Development Norms:

- **Amusement Park & Water Sport**
Minimum 70% of the built up area.
- **Restaurant:**
Max 10% of the Built up area.
- **Shopping:**
Max 5% of the Built up area.

Note: The Concessionaire shall have the right to include additional entertainment rides in the Project as per the requirement. The standards and specifications provide only minimum requirements of NRDA in terms of facilities and services in the Project. The actual facility may be larger and include other entertainment rides and facilities. The Concessionaire shall, with prior approval of the Authority, be allowed to include other rides and services to the Project, except as provided in Schedule 9.

SCHEDULE 4
(Annex-1)
DEVELOPMENT NORMS
(See Articles 3.4)

DEVELOPMENT CONTROL NORMS	
Allowed FSI	0.3
Max Gr. Coverage	15%
Max Height	15 mtr
Amusement Park & Water Sport	Minimum 70% of the built up area.
Restaurant	Max 10% of the Built up area.
Shopping:	Max 5% of the Built up area.

SCHEDULE 5
DRAFT SUBSTITUTION AGREEMENT

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

AMONGST

1. Naya Raipur Development Authority, having its office **1st Floor Utility Block Capital Complex Sector-19, Naya Raipur 492002 Chhattisgarh** (hereinafter referred to as the Authority which expression shall, unless the context otherwise requires, include its successors and assigns); and
2. [*****Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ****, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and
3. ****[NAME AND PARTICULARS of Lenders Representative] and having its registered office at ****, acting for and on behalf of the Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated ***with the Concessionaire (the "Concession Agreement") on design, build, finance, operate and transfer basis (DBFOT) the development of Amusement and Recreational Park on PPP (DBFOT) basis at Sector 24, Naya Raipur and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer
- (D) and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (E) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement. NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956/2013, selected by the Lenders' Representative, on behalf of Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement; **"Notice of Financial Default"** shall have the meaning ascribed thereto in Clause 3.2.1; and **"Parties"** Means the parties to this agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issuance of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that

upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

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

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessions Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessions Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

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

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreement

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

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 6 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

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

5.3 Realization of Debt Due

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

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) No sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

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

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

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

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Concessions Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the parties. The venue of arbitration shall be Raipur/Naya Raipur and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

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

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

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

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its

name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.00 p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorized representatives

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

9.13 Original Document

This Agreement may be executed in three counterparts, each of which were executed and delivered shall constitute an original of this Agreement. **IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE

[***] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of AUTHORITY by the Authority's Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of

SCHEDULE 6

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-6 for each of the Project Milestones (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Concessioneing Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [365 (three hundred sixty fifth) day (12 Month) from the Appointed Date (the "**Project Milestone-I**").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have procured building permissions and other statutory approvals as requirement set forth in Concession Agreement. .

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [1095th (one thousand and ninety fifth)] day (37 Month) from the Appointed Date (the "**Project Milestone-II**").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have Procurement of all the materials w.r.t to proposed rides as specified in Schedule- 4 of the Concession Agreement. .

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [1275th (one thousand two hundred and seventy fifth) day (43 Month) from the Compliance Date (the "**Project Milestone-III**").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have completed at least 50% of the total built up space available for Project.

5 Project Construction Completion Date

5.1 The Project Construction Completion Date shall occur on the [1825th (one thousand eight hundred and twenty fifth)] day (60 Month) from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed full and final construction and development of the Project/Project Facility in all respect, as defined in this Agreement.

6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Project Construction Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Scheduled Completion Schedule shall be deemed to have been amended accordingly

SCHEDULE 7
INDICATIVE LIST OF CLEARANCES

NRDA would provide all the necessary support to the Concessionaire to obtain clearances required for the implementation of the project. An indicative list of minimum clearances required for the project is given in the table below:

Sl.	Item	Agency
1	Water connection	NRDA
2	Shifting of Services and utilities	NRDA
3	Traffic Management during operation	Traffic Police
4	Application for PAN, sales tax and other tax registrations etc.	Concerned departments of GoCG and Gol
5	Electricity connection	Chhattisgarh State Power Distribution Company Limited
6	Clearance for employing labour-Primary employer	Labour Commissioner
7	Clearance for blasting and use of explosives	Commissioner of Explosives and Police Department, GoCG
8	Employment of migrant labour	Labour Commissioner
9	Cutting of Trees	MOEF, GOI
10	Use of Lake water and discharge into Lake	CECB, CPCB ² , Water Resources Department, Chhattisgarh
	Activities in Lake water and on edge of Lake	CECB, CPCB, Water Resources Department, Chhattisgarh
11	Realignment and channelisation of Nalas, Natural Stream	NRDA, Water & Sanitations Departement
12	Installation of Amusement Rides and other machines	Concerned Departments of GoCG
13	Fire safety equipment	Concerned Departments of GoCG
14	Drains and sewers	Water & Sanitations Departement, CECB
15	Boiler and Diesel Generator Set	CECB ³
16	Licence for restaurant and related activities	Concerned Departments of GoCG and Gol
17	Working in Night Shifts	Police Department, Municipal Council
18	Re-routing of vehicles	Traffic Police
19	Storage of sludge/Silt	CECB, CPCB
20	Safety certificate and certificate for starting the operation of all the rides.	Concern department of GOI and GOCG.

² Central Pollution Control Board

³ Chhattisgarh Environment Conservation Board

SCHEDULE 8

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the Concession Agreement dated *** (the "Agreement"), which has been entered into between the NRDA and **** (the "Concessionaire") for development of Amusement and Recreational Park at Naya Raipur on PPP Basis on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction and termination period of the Project

2 Definitions and interpretation

- 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 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer 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 Specification Compliance Certificate as set forth in Paragraph 5;
 - (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;and
 - (vi) undertaking all other duties and functions in accordance with the Agreement.
 - Vii) issuing Completion/ Provisional Certificate as per Clause 2.8.1 of the Agreement.
- 3.2 The Independent Engineer 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 Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the investigations, characteristics of materials from borrow areas and sites and topographical surveys. The Independent Engineer shall complete such review and send its comments/observations to the NRDA and the Concessionaire within 15 (fifteen) 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 Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish it: comments within 15 (fifteen) days of receipt thereof.
- 4.4 Upon reference by the NRDA, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the NRDA.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and Structural Safety Certificate received by the Independent Engineer for its review and comments during the Construction Period the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

- 5.2 The Independent Engineer shall review the quarterly progress report furnished by the Concessionaire and send its comments thereon to the NRDA and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project once every quarter, preferably after receipt of the quarterly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in an] case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Standards and Specifications. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facilities. The Independent Engineer shall send a copy of its Inspection Report to the NRDA and the Concessionaire within 7 (seven) days of the inspection.
- 5.5 The Independent Engineer may inspect the Project more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 5.6 For determining that the Construction Works conform to Standards and Specifications, the Independent Engineer carry out, or cause to be carried out, tests on a sample basis in accordance with Good Industry Practice for quality assurance.
- 5.7 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Standards and Specifications, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers, it shall make a recommendation to the NRDA forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works for workers and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the NRDA forthwith, recommending whether or not such suspension may be revoked by the NRDA.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the NRDA and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, necessary tests to determine that the Construction Works conform to Standards and Specifications and issue a Specification Compliance Certificate ("**Specification Compliance Certificate**").
- 5.14 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.
- 6 Termination**
- 6.1 The Independent Engineer shall inspect the Project Facility once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of NRDA under Article 6.2. The Independent Engineer shall make a report in reasonable detail and send it forthwith to NRDA and the Concessionaire.
- 7 Determination of costs and time**
- 7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.
- 8 Other duties and functions**
- The Independent Engineer shall perform all other duties and functions specified in the Agreement.

9 Miscellaneous

- 9.1 The Independent Engineer shall notify its programme of inspection to the NRDA and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the NRDA forthwith.
- 9.3 The Independent Consultant shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the NRDA along with its comments thereon.
- 9.4 The Independent Engineer 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.
- 9.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the NRDA or such other person as the NRDA may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the NRDA.

SCHEDULE 9

LIST OF PROHIBITED ACTIVITIES

The Concessionaire shall not undertake following activities on the Project Site:

AMUSEMENT PARK

- Any activities resulting into pollution to Lake and ground water.
- Any activities creating breach of urban design guidelines of Naya Raipur
- Any Activities of hazardous nature to environment and the society
- Activities resulting air and noise pollution
- Any other Un lawful activities
- Any activity involving commercial exploitation of Lake water like Pisciculture, other than those envisaged under the Project

RECREATIONAL PARK

- Organizing sports like cricket, hockey, volleyball and football
- Activities involving pets and animals
- Organizing marriages and other parties
- Any other Unlawful activities
- Any activities resulting into pollution to Lake and ground water.
- Any activities creating breach of urban design guidelines of Naya Raipur
- Any Activities of hazardous nature to environment and the society
- Activities resulting air and noise pollution
- Any activity involving commercial exploitation of Lake water like Pisciculture, other than those envisaged under the Project
- Construction of built-up area for commercial usage.

SCHEDULE –10
(See Clauses 2.8)
COMPLETION CERTIFICATE

- 1 I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”) for the Project Facility at Sector-24 in Naya Raipur in the State of Chhattisgarh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the tests carried out as per provision of Article 12.8 and Schedule-4 of the Agreement have been successfully undertaken to determine compliance of the Project Facility with the provisions of the Agreement, and I/We am/are satisfied that the Project Facility can be safely and reliably placed in commercial service of the users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facility have been completed, and the Project Facility is ready for entry into commercial operation on this the day of 20.....

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

(Signature)
(Name)
(Designation)
(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession dated (the "Agreement"), for the Project Facility at Sector-24 in Naya Raipur in the State of Chhattisgarh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the tests carried out as per provision of Article 12.8 and Schedule-4 of the Agreement have been undertaken for the Project Facility/section ----- of the Project to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Project Facility/section ----- of the Project Facility that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[§] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Facility/section ----- of the Project Facility, pending completion thereof.
- 3 In view of the foregoing, I/We am/are satisfied that the Project Facility/section ----- of the Project Facility can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project Facility/section ----- of the Project Facility is hereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED AND DELIVERED For and on behalf of Concessionaire by:	SIGNED, SEALED AND DELIVERED For and on behalf of INDEPENDENT ENGINEER by:
(Signature) (Name and Designation) (Address)	(Signature) (Name and Designation) (Address)

[§] May be struck out if not applicable. Also strike out other parts which are not applicable.

SCHEDULE 11
Guidelines for the Computation of Depreciated Historic Cost (DHC)

1. The Depreciated Historical Cost (“**DHC**”), wherever applicable, shall be computed based on the following norms: The depreciation shall be calculated on straight line basis. The depreciation rates shall be in accordance with the provisions of the Companies Act 1956, as may be amended from time to time
2. The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
3. Wherever Book Value or Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Concessionaire, to the satisfaction of the Grantor, with Chartered Accountant's, Public Accountant's and valuer's certificates and duly supported by bills and other documents of manufacturers/suppliers/ civil works contractors, at the time of installation of the new assets or replacement of the assets as the case may be