

SECTION 2 - DRAFT CONCESSION AGREEMENT

BETWEEN

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

AND

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

TABLE OF CONTENTS

ARTICLE**CONTENTS**

1	Definitions & Interpretations
2	The Concession
3	Obligations of Concessionaire
4	Obligations of Concessions Authority
5	Force Majeure
6	Events of Default and Termination
7	Dispute Resolution
8	Financing and Lender's Rights
9	Representations, Warranties and Disclaimer
10	Miscellaneous

SCHEDULE

1	Project Site including details thereof
2	Format of Performance Security
3	Vesting Certificate
4	Standards & Specifications
5	Draft Substitution Agreement
6	Project Completion Schedule
7	Indicative List of Clearances
8	Terms of Reference for Independent Consultant
9	List of Prohibited Activities

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

BETWEEN

Naya Raipur Development Authority (NRDA) having its registered office at Gate No. 2, DKS Bhavan, Mantralaya, Raipur – 492001, 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, 1956, 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**;

AND

_____, {a company incorporated under the provisions of the Companies Act, 1956} having its registered office at _____ (hereinafter referred to as the "**Successful Bidder**", which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the **THIRD PART**

WHEREAS,

- A. Concessing Authority had decided to select the Successful Bidder through a competitive bidding process for the designing, development, implementation, financing, operation and maintenance of an Amusement and Recreational Park (the "**Project**") on _____ at Naya Raipur, Chhattisgarh comprising ~1,61,874 sq m (~40 Acres), in accordance with the terms and conditions to be set forth in this Concession Agreement.
- B. Concessing Authority is in the ownership and possession of the aforesaid land comprising ~1,61,874 sq m (~40 Acres) (as per details of Project Site attached at Schedule 1).
- C. With an objective to seek private sector participation in the development of the aforesaid Project, Concessing Authority had invited competitive Proposals/ Bids from interested parties to partner Concessing Authority inter alia, to subsequently develop, design, engineer, finance, construct, market, operate, maintain and manage the same on the terms and conditions contained in the Request for Proposal (RFP) document and to determine, levy, demand, collect, retain and appropriate User Charges from the Users of the Project Facility;
- D. In response to the Request for Proposal document, as referred to in recital 'B' above, the Concessing Authority received Proposals from various Bidders;
- E. 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.

- F. As per the terms and conditions of the RFP Document, the Successful Bidder {have incorporated the Concessionaire as a Special Purpose Company in India / is a company incorporated} under the Companies Act, 1956 to implement 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.
- G. Concessions Authority acknowledges that as on this day, the Concessionaire has submitted an unconditional and irrevocable revolving Bank Guarantee for a value of Rs 1.00 Crore (Rupees one crore only) as Performance Security for the Concession Period of 30 years, as per the conditions specified in Article 3.2.
- H. In pursuance to the above, Concessions 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:

“Affected Party” shall have the meaning ascribed to it in Article 5.1.1(a).

“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.

"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.

"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) XXXX, (ii) YYYY, and (iii) ZZZZ 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.

“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 Concessions 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 (i) Amusement Park and (ii) Recreational Park; (iii) levy, collection, retention and appropriation of User Charges from Users of the Project Facility; (iv) insurance of the Project Facility, for the purposes of providing the services on a continuous basis and (v) transfer of the Project Facility, as envisaged, to the Concessions Authority at the end of the Concession Period or on prior termination of the Concession Agreement on Concessionaire/ Concessions Authority Event of Default or otherwise. 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 Construction Completion Date” means a date of the completion of the Construction Period, which shall be at the expiry of a period of 3 (Three) years from the Compliance Date or such other date (with the consent of Concessions Authority) by which the overall development and operationalisation of the Project is completed in accordance with the provisions of this Agreement and when the Project Milestone Completion Certificate is issued by Concessions Authority as per Article 2.8.

“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” means the milestone as set out in Article 2.8.

“Project Milestone Completion Certificate” means the certificate issued to the Concessionaire by the Concessions Authority as described in Article 2.8 and Article 2.8.1.

“Project Site” means the land area earmarked for the development of Amusement Park and Recreational Park at Naya Raipur, comprising a land area of ~1,61,874 sq m (~40 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.

“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.

“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 *parri 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 Concessions 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 Concessions 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 Concessions 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) a sum of Rs. 22.61 Crores (Rupees twenty two crore and sixty one lakhs only);

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 byelaws 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 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), alongwith any Addendums issued to the RFP document dated _____;
- ii) Instructions to Bidders (ITB) {Section I of the RFP document dated _____}, enclosed/ attached with this signed Concession Agreement; and
- iii) 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, authorisations 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 an Encumbrance, with respect to its rights, in favour of Senior Lenders, only during the Concession Period strictly as per the provisions of Article 9 and 11.1(c), in part or whole, in accordance with the terms of this Agreement. Provided that the Concessionaire shall provide written intimation to the Concessions Authority alongwith relevant records of the encumbrance(s) created, which shall be in strict compliance with the provisions of Article 11.1 (c).
- e. During the Concession Period, the Concessionaire shall have exclusive authority to develop, implement, operate the Project and in 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 of Way 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 Concessing Authority**

The Concessing Authority shall have:

- i. 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 Concessing Authority shall be fulfilled at the end, when all other Conditions Precedent of both the Parties are met/fulfilled;
- ii. Give comments/ observations (if any) to the concept plan 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 concept plan by the Concessing Authority.
- iii. Give approval to the amended concept plan within 5 (five) days from the date of its receipt.

c. **Conditions Precedent for the Concessionaire**

The Concessionaire shall have:-

- i. Prepared a 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 concept plan as per the applicable Local Byelaws, Norms, etc and submit to the Concessing Authority for its approval, whereby meeting all the requirements mentioned herein, apart from all other requirements of this Concession Agreement in the concept plan within a period of 140 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 Consultant in the suggestions and amendments given by NRDA to Concessionaire.
- ii. Incorporated the necessary suggestions / amendments proposed by the Concessing Authority in its concept plan, within a period of 10 (ten) days from the date of receipt of such suggestions from the Concessing Authority and submit again for approval.
- iii. Provided the Concessing 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.

- iv. Delivered to the Concessions Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement 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 Concessions Authority, 3 (three) true copies thereof, duly attested by a Director of the Concessionaire.

2.4.1 Obligations to Satisfy Conditions Precedent

- i. Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 180 (One Hundred and Eighty) days of Appointed Date.
- ii. 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

- i. In the event that any of the Conditions Precedents relating to the Concessionaire 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, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the parties and no Party shall subsequently have any rights or obligations under this Agreement and Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- ii. 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 20% (twenty percent) of the Performance Security. 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. 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

- iii. 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.
- iv. 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.

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, levelling, 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-fulfilment of Conditions Precedent, Concessions 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 Concessions 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 Concessing 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 Concessing Authority and that Concessing 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 30 (Thirty) 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. Before expiry of initial Concession Period of 30 (thirty) years, Concessing Authority shall publish the project to invite bids for managing, operating and maintaining the project for next 30 years. Bid will have a measureable financial bid parameter, which will be decided by the Concessing Authority. The Concessionaire shall have the option to offer an amount matching the highest bid received. The Concessionaire shall have the right get the project facility on concession for another 30 years upon expiry of initial Concession Period of 30 (thirty) years, on payment of amount offered by the highest bid to the Concessing Authority, while other terms and conditions of the agreement shall remain same.
- 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 Concessing Authority in accordance with the provisions of Article 6.6 (Handback of Transfer Assets).

2.8 Project Milestone

- a. The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule – 6 of this Agreement.
- b. In the event that any of the Project Milestone is not achieved for any reason other than Force Majeure or reasons attributable to the Concessions Authority or any Competent Authority, the Concessionaire shall, subject to clause below, pay to the Concessions Authority damages for delay beyond the 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.
- c. In the event that Project Milestone does not occur within 120 (one hundred and twenty) days from the date on which the Project Milestone was due, the Concessions 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 Concessions 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 Project Milestone Completion Certificate

Upon completion of Project works, the Concessionaire may seek the issuance of “**Project Milestone Completion Certificate**” upon written intimation to Concessions Authority of such completion. The Concessions Authority on its part, after detailed inspections of the Project relating to the requirements set out in Schedules and in compliance with the Project Milestone set out in Article 2.8 and on verifying the relevant documentation, shall promptly and in any case within 30 (Thirty) days from the date of request therefore, issue such Certificate.

2.9 Consideration to Concessions Authority

2.9.1 Annual Concession Fee

- a. In consideration of the rights, privileges and interests granted by the Concessions Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Concessions 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, after every 3 years, at the rate of 15% (fifteen percent), over the previous Annual Concession Fee.
- c. The first Annual Concession Fee shall be due and payable from the date of completion of 42nd 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 date of completion of 42nd 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 Concessing Authority or its nominee / designated recipient at the Concessing Authority's or its nominee's / designated recipient's bank account at a scheduled bank (to be intimated later on) payable at Raipur.
- e. In the event of delay up to one week in payment by the Concessionaire, the Concessionaire shall be required to pay the Concessing 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 (as applicable) over and above the Concession Fee to Concessing 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.

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 For the first 5 (five) years post date of commencement of Commercial Operations, maximum User Charges that may be demanded by the Concessionaire for the usage of Recreational Park shall be as per this Clause 2.10.2 of this Agreement.

Facility	User Charges per person per entry
Usage of Recreational Park	Rs 5 (Rupees Five)

- 2.10.3 After 5 (five) years of Commercial Operation of the Project, the Concessionaire shall be allowed to revise the User Charges for Recreational Park, as specified in Clause 2.10.2 above, after obtaining approval of the revised charges from Concessing Authority.

2.11 Novation

The Concessionaire may be allowed to novate the agreement after completion of 10 (ten) consecutive years after Project Construction Completion Date. The Concessionaire shall submit details of the proposed novatee along with its other qualifications (financial and technical capabilities) to the Concessioneing Authority for its due approval. Such novation shall be subject to execution of proper documents by the proposed novatee. Concessioneing Authority shall reserve the right to reject any novation at any time.

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 Project Milestone 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 Concessions Authority and maintain Performance Security of Rs 1,00,00,000 (Rupees one crore only) in the form of a Bank Guarantee in favor of CEO, Naya Raipur Development Authority, payable at 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 nationalised bank or a financial institution approved by the Concessions Authority, payable at 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 the issuance of Project Milestone Completion Certificate by the Concessions Authority. The Concessionaire undertakes and warrants to Concessions 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.

- c. Upon occurrence of Concessionaire Event of Default, the Concessions 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 Concessions Authority a fresh Performance Security as aforesaid, failing which the Concessions 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 Concessions 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 Concessions Authority, within the Project Milestone specified under Article 2.8 or such extended date as may be approved by Concessions 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. In the Amusement Park area, the Concessionaire shall be allowed to develop maximum 16,000 square metre of built up area of with a maximum height restriction of 6.5 metre on land under Amusement Park area, as per the provision of Naya Raipur Development Plan 2031 In the Recreational Park area, the Concessionaire shall not be allowed to develop any permanent structure, for commercial usage.
- 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.
- e. The Concessionaire shall obtain the **“Specification Compliance Certificate”** from Independent Consultant before the commencement of commercial activities.

- f. The Concessionaire shall adhere to the safe construction parameters and complete the construction works before the Project Construction Completion Date or such extended date as may be approved by Concessioneing Authority.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. In terms with the provisions of this Agreement, the Concessionaire shall make timely payment to Concessioneing Authority, wherever required and applicable.
- l. The Concessionaire shall implement and make operational the Project as per the Project Milestone given in Article 2.8.
- m. The Concessionaire shall not remove any earth from the land/ Project Site until unless the local authorities have provided permission for it. In addition to this, the Concessionaire shall submit a copy of the document to the Concessioneing Authority, wherein it has been clearly stated that the approval has been granted.
- n. The Concessionaire shall submit to the Concessioneing Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Concessioneing 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 Concessions Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.

- o. 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), Concessions 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 Concessions 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 Concessions Authority for perusal.
- p. 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.
- q. 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.
- r. The Concessionaire shall replace the broken machinery and equipment immediately after its occurrence and shall bear the entire cost.
- s. The Concessionaire shall design the Project Facility as per the Urban Design Master Plan specified by the local authorities. In case of any deviations in the design, the Concessionaire shall be required to get prior approval from NRDA.
- t. Concessionaire shall follow applicable laws and rules of Government of Chhattisgarh and Government of India regarding water bodies and other environmental aspects.
- u. A minimum buffer of 50 metres around the lake shall be no development zone in order to prevent pollution and conserve the natural water shed of the lake.
- v. The Concessionaire shall ensure that no untreated water is let out in the lake.
- w. 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 under the Amusement Park and the Recreational Park 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 Concessing 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 Concessing 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 submit to the Concessions Authority a copy of audited annual report every year throughout the Concession Period.
- k) 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.
- l) 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.
- m) 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.
- n) 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.

- o) 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, incase they continue to accrue, shall henceforth be accrued / appropriated to the Concessions Authority.
- p) The Concessionaire shall be required to invite a representative of NRDA, as selected by NRDA, every year to the General Body Meeting of the Concessionaire.

3.6 Minimum Equity Requirement (Concessionaire Shareholding)

- a) The share holding of Lead Member of the Successful Bidder, as mentioned in Recital E, in the issued and paid up equity share capital of the Concessionaire shall be not less than:
 - (i) 51% (fifty one percent) till a period of five years from the Project Construction Completion Date and;
 - (ii) 26% (twenty six percent) during the remaining Concession Period..
- b) All other members of the Consortium shall legally and beneficially hold not less than 26% (twenty six percent) of the paid-up equity capital of the Concessionaire till the fifth anniversary of the Project Construction Completion Date.
- c) 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 Concessions Authority. On an application made for the purpose, Concessions Authority may permit the change of equity components / shareholding patterns, provided that the Concessions Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Concessions Authority. However, no such change in the equity components / shareholding pattern shall be permitted by Concessions Authority, which would make the Consortium members non-compliant with Articles 3.6(a) and 3.6(b) above.
- d) 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 Concessions Authority. In the event of non-compliance of

Article 3.6 (a) and 3.6 (b) above, the same shall be construed as Concessionaire Event of Default, and the Concessions 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 Concessions 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 Concessions 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 Concessions Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall Concessions 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 Concessions 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. Concessions 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 Concessions 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 Concessions 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:-

- (ii) An executive summary of activities completed and under progress;
- (iii) 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;
- (iv) 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, Concessioneing 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 Concessioneing Authority and it shall indemnify the Concessioneaire 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 Concessioneaire in getting all such approvals, permissions and authorisations which the Concessioneaire 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 Concessioneaire, facilitate the Concessioneaire in obtaining necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessioneaire than those generally available to commercial customers receiving substantially equivalent facilities / utilities; and
- d. The Concessioneing Authority shall provide to the Concessioneaire Right of Way to the Project Site within 180 days from the Appointed Date. Failure to do so, for any reason other than Concessioneaire Event of Default, shall constitute an event of default by Concessioneing Authority ("**Concessioneing Authority Event of Default**").
- e. Upon written request from the Concessioneaire, provide reasonable facilitation to the Concessioneaire for the purpose of discharging its obligations under this Agreement by the Concessioneaire
- f. The Concessioneing 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 Concessioneing Authority has a right to appoint a person specialising 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 Concessions Authority at its own discretion shall appoint or revoke the appointment of such Expert, at any point of time.

4.3 Independent Consultant

- a. The Concessions Authority shall appoint a person specialising in entertainment park sector, for review of the construction of the project. (“**Independent Consultant**”)
- b. The Independent Consultant shall be appointed before the beginning of the Concession Period, for a period starting from the beginning of Construction Period till after a period of 6 (six) months from the Project Construction Completion Date.
- c. The roles and functions of Independent Consultant shall be as mentioned in Schedule 8. The appointment of Independent Consultant shall be done again by NRDA for a period 1 (one) year before Termination if the Termination is due to expiry of Concession else the Independent Consultant shall be appointed for a period of atleast 30 (thirty) days before Termination.
- d. The Independent Consultant shall submit regular periodic reports (atleast once every quarter) to Concessions Authority.
- e. The remuneration, cost and expenses of the Independent Consultant shall be paid by the NRDA.
- f. If the Concessionaire has reason to believe that the Independent Consultant 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 Consultant. Upon receipt of such representation, the NRDA shall hold a tripartite meeting with the Concessionaire and Independent Consultant 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 Consultant is terminated hereunder, NRDA shall appoint forthwith another Independent Consultant in accordance with Clause 4.3.
- g. If either Party disputes any advice, instruction, decision, direction or award of the Independent Consultant, 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 Project Construction 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.

ARTICLE 6 EVENTS OF DEFAULT AND TERMINATION

6.1 Events of Default

Events of Default shall mean either Concessionaire Event of Default or Concessing 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 Project Milestone Completion Certificate, within the time period laid down in Article 2.8;
- ii. The Concessionaire has failed to pay the Annual Concession Fee.
- 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 Concessing Authority, is likely to delay achieving Project Construction 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 Concessing 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 Concessing 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.

b. **Concessions Authority Event of Default**

Failure of Concessions 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 Concessionaire Event of Default shall constitute an event of default by Concessions Authority ("**Concessions Authority Event of Default**").

6.2 Termination due to Event of Default

a. **Termination for Concessionaire Event of Default**

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

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

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Concessions

Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- ii. If the Concessionaire 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 Concessing Authority. Within 30 (Thirty) days of receipt of Preliminary Notice to Remedy, to Concessing Authority shall forward to the Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**Concessing Authority Proposal to Rectify**"). In case of non-submission of Concessing Authority Proposal to Rectify within the said period of 30 (Thirty) days, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If Concessing Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, Concessing Authority shall have further period of 90 (Ninety) days to remedy / cure the underlying Event of Default. If, however Concessing Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire 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 Concessing 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 Project Construction Completion Date, Concessioneing 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 Concessioneing Authority shall not make any payments to the Concessionaire. In addition, Concessioneing Authority shall also be entitled to forfeit and retain the Performance Security, if subsisting.
- (III) Upon Termination of this Agreement on account of Concessioneing Authority Event of Default, Concessioneing Authority shall be liable to pay compensation which shall be the lower of:
 - a) The aggregate of net value, as determined by Independent Consultant, 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 / utilised 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 receiving the Termination Notice.

6.3 Rights of Concessioneing Authority on Termination

Upon Termination of this Agreement for any reason whatsoever, Concessions 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, Concessions 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 regularisation 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 Concessions 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 Concessions 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 Concessions Authority, on expiry of the Term, 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 Concessions 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 Concessions 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 Concessions 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 Concessions Authority's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in Concessions 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, Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessions Authority or its nominees. The Concessions 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 Concessions 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 Concessions Authority.
- (vii) Without prejudice to the foregoing, Concessionaire agrees to indemnify and keep indemnified the Concessions Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Concessions 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 Concessions 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 Concessions 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 Concessions 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.

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 Concessions 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 Concessions Authority further confirms to the Concessionaire that it can represent to the Senior Lenders that the Concessions 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 Concessions 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 Concessions 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 Concessions 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 Concessions Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to Concessions Authority that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the 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;
- g. 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;
- h. 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;
- i. 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;
- j. 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;
- k. subject to receipt by the Concessionaire from Concessions 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 Concessions Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or Concessions Authority;
- l. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to Concessions 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; and
- m. 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 Concessions 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 Concessions Authority shall not be liable for the same in any manner whatsoever to the Concessionaire

9.2 Representations and Warranties of Concessions Authority

Concessions Authority represents and warrants to the Concessionaire that:

- a. Concessions Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- b. This Agreement constitutes Concessions Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- c. 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
- d. Upon the Concessionaire paying the Annual Concession Fee 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.

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 11.1(a) and 11.1(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 11.1 (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 31st March 2009 + 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 11.2 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 governed by the laws of India. 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,
Gate No. 2, DKS Bhavan,
In front of Mahanadi Dwar of Mantralaya,
Raipur – 492 001
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, etc. 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.

For and on behalf of Concessioneing Authority

Signed by _____

For and on behalf of Concessionaire

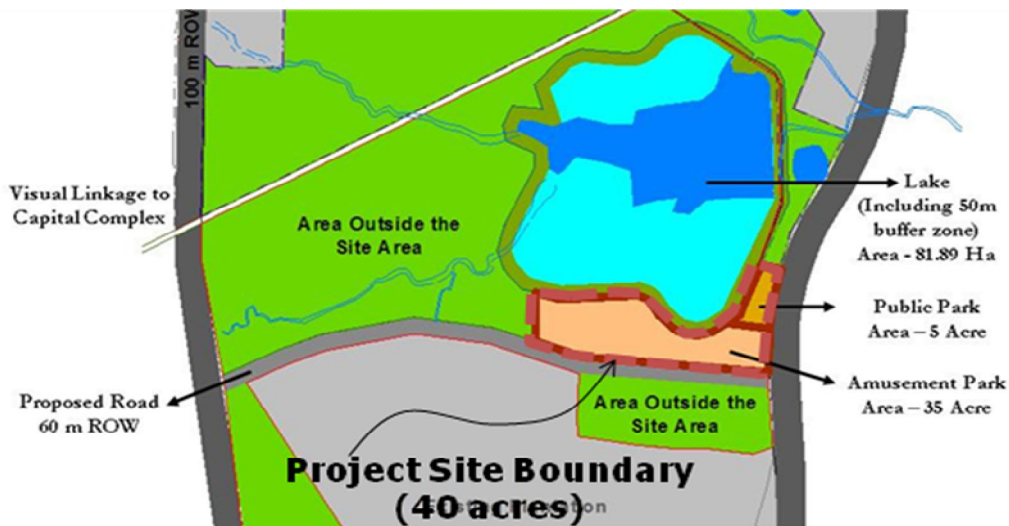
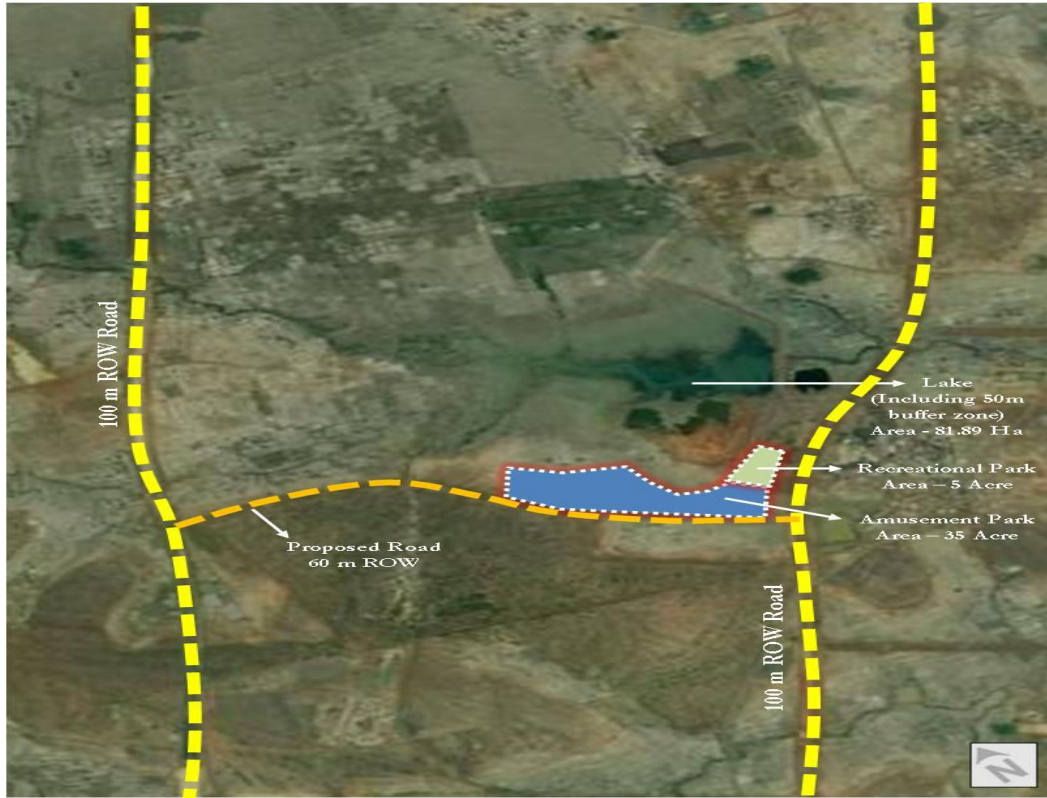
Signed by _____

In the presence of Witnesses:

- 1)
- 2)

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 1,61,874 sq m (~40 Acres) as shown in map given below



As per the DCR of development Plan of Naya Raipur, the permissible FSI is 0.1 for the park and the same will be allowed for the compatible activities including such as restaurants, convenient shopping, administrative building, community hall, toilets, etc. provision shall be made that compatible activities will be allowed in a parcel of land having area of 16000 sq.mt (4 acres) with total built up area of 8000 sq.mt, with height restriction of 6.5 meter. The built up area for the multi utility lawn can also be prescribed considering the requirement.

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. 1.00 Crore (Rupees one crore 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

¹ To be issued by a Scheduled Nationalised Bank in India

- 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. 1.00 Crore (Rupees one crore 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.
 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. 1.00 Crore (Rupees one crore 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. 1.00 crores (Rupees one crore 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 ("**BOT**") basis.
2. The Concessing Authority hereby acknowledges compliance and fulfilment 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**STANDARDS & SPECIFICATIONS***(See Articles 1.1, 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 in an area of ~35 Acres, out of the total land area of ~40 Acres and consist of the following mandatory components:

	Entertainment Ride	Development Requirement	Minimum Specification - Capacity
Land Based Entertainment Rides	• Cable Car	• Mandatory	12 persons
	• Family Train	• Mandatory	24 persons
	• Loop Roller Coaster	• Mandatory	24 persons
	• Flying Saucer	• Mandatory	12 persons
	• Kids Play Area	• Mandatory	--
	• Carousel	• Mandatory	18 kids
	• Bumper Cars	• Optional	10 cars
	• Pirate Ship	• Optional	40 persons
Water Based Entertainment Rides	• Lazy River	• Mandatory	8 persons
	• Water Coaster / Flume Ride	• Mandatory	10 persons
	• Paddle Boat	• Mandatory	10 persons
	• Family Pool	• Mandatory	--
	• Wave Pool	• Optional	--
	• Tube Slide	• Optional	8 persons

*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.

Compulsory Amenities/Utilities (Provisioning as per standard industry practices)

- Food court & restaurant
- Green spaces
- Public Toilets
- Changing Rooms, Lockers, Shower Stations
- Information & Help Desk, First Aid Desk
- Ticketing Counter, Administration Office
- Multi Utility Lawn
- Park Benches
- Lighting
- Vehicle Parking facility for visitors
- Kiosks for security post
-
- Other entertainment facilities on the pattern of other amusement parks

Optional Amenities/Utilities (Provisioning as per standard industry practices)

- Retail / Shopping facility related to amusement park activities
- A maximum built-up area of 16000 Sq.m. on the 35 acres land for Amusement Park
- A club house, to be used primarily for recreational usage, shall be permitted within the permissible built-up area, as per the provision of naya Raipur Development Plan 2031

2. RECREATIONAL PARK

The Concessionaire shall be required to construct the Recreational Park in an area of ~5 Acres, out of the total land area of ~40 Acres and consist of the following mandatory components:

- Green spaces
- Perimeter walking / Jogging path system
- Water fountains
- Lighting
- Park Benches
- Public Toilets
- Kiosks for security post
- Ticket Booth
- Vehicle Parking facility for visitors

SCHEDULE 5

DRAFT SUBSTITUTION AGREEMENT

(to be provided later)

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 Concessions Authority of such compliance alongwith necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [120th (one hundred and twentieth)] day from the Appointed Date (the "**Project Milestone-I**").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and expended not less than 10% (ten per cent) of the total capital cost set forth in the Financing Documents.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the "**Project Milestone-II**").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of permanent structures like buildings and expended not less than 35% (thirty five per cent)] of the total capital cost set forth in the Financing Documents.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [730th (seven hundred and thirtieth)] day from the Appointed Date (the "**Project Milestone-III**").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced installation of machinery and equipments of rides in the Project and expended not less than 50% (fifty per cent)] of the total capital cost set forth in the Financing Documents.

5 Project Construction Completion Date

- 5.1 The Project Construction Completion Date shall occur on the [1095th (one thousand and ninety fifth)] day from the Appointed Date.
- 5.2 On or before the Project Construction 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 Project 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

² Central Pollution Control Board

³ Chhattisgarh Environment Conservation Board

Development of Amusement and Recreational Park on Public Private Partnership (PPP) basis at Naya Raipur, Chhattisgarh

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

SCHEDULE 8

TERMS OF REFERENCE FOR INDEPENDENT CONSULTANT

1 Scope

- 1.1 These Terms of Reference for the Independent Consultant (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, operate and transfer (DBOT) 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 Consultant

- 3.1 The role and functions of the Independent Consultant 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.

3.2 The Independent Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.4 Upon reference by the NRDA, the Independent Consultant 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 Consultant for its review and comments during the Construction Period the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Consultant 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 Consultant 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 Consultant shall describe in reasonable detail the lapses, defects

or deficiencies observed by it in the construction of the Project Facilities. The Independent Consultant shall send a copy of its Inspection Report to the NRDA and the Concessionaire within 7 (seven) days of the inspection.

- 5.4 The Independent Consultant may inspect the Project more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Standards and Specifications, the Independent Consultant carry out, or cause to be carried out, tests on a sample basis in accordance with Good Industry Practice for quality assurance.
- 5.6 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Consultant 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 Consultant 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 Consultant to inspect such works, and within 3 (three) days of receiving such notice, the Independent Consultant 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 Consultant 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 Consultant 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 Consultant shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Termination

6.1 The Independent Consultant 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 Consultant 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 Consultant shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

7.2 The Independent Consultant 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 Consultant shall perform all other duties and functions specified in the Agreement.

9 Miscellaneous

9.1 The Independent Consultant 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 Consultant to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Consultant thereon shall be furnished by the Independent Consultant 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 Consultant, whereupon the Independent Consultant shall send one of the copies to the NRDA along with its comments thereon.

9.4 The Independent Consultant 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 Consultant 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, 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 Un lawful 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, 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