

REQUEST FOR PROPOSAL

**DEVELOPMENT OF
CONVENTION CENTRE & 5 STAR CATEGORY
HOTEL / RESORT WITH OTHER
WATERFRONT ENTERTAINMENT FACILITIES**

**ON PRIME LAND ALONG BEACH ROAD AT
VISA KHAPATNAM, ANDHRA PRADESH, INDIA
ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS**

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

Volume 1: Instructions to Bidder

December 2023

Notice No. xxxxxx, Dated xxx

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

Tender Inviting Authority:



**Visakhapatnam Metropolitan Regional
Development Authority (VMRDA), Visakhapatnam**

Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003

REQUEST FOR PROPOSAL (RFP)

Section I	Instructions to Bidders (ITB)
Section II	Formats for Bid Submission (FBS)
Section III	Technical Specifications (TS) & Development Controls (DC)
Section IV	Draft Concession Agreement

SCHEDULE OF RFP PROCESS

Event Description	Scheduled Date
RFP document availability	RFP documents shall be available on the e-procurement portal, www.apecurement.gov.in From DD-MM-YYYY 17.00 hrs. to DD-MM-YYYY up to 16.00 hrs.
Pre bid Conference	15:00 Hrs. (IST) on DD-MM-YYYY at: Visakhapatnam Metropolitan Regional Development Authority (VMRDA), Conference Hall, 3 rd Floor, Siripuram Junction, Udyog Bhavan, Visakhapatnam, Andhra Pradesh 530003. An option for attending the Pre-bid Conference through Video Conference (VC), shall be provided for interested parties making a formal request to VMRDA, as per procedure specified in this RFP
Due Date & Time for submission of Online Bid (Bid Due Date)	15.00 Hours IST on DD-MM-YYYY
Due Date & Time for submission of Technical Bid (Physical Form)	15:00 Hrs. (IST) on DD-MM-YYYY at: Visakhapatnam Metropolitan Regional Development Authority (VMRDA), Siripuram Junction, Udyog Bhavan, 7 th Floor, Engineering Wing Visakhapatnam, Andhra Pradesh 530003. <i>(For avoidance of doubt, submission of the Online Bid (Technical & Financial Bid) and in Physical Form (Technical Bid only) is a mandatory requirement as prescribed in this RFP. Failure to submit the Online Bid or Physical Form shall lead to disqualification of the Bid).</i> <i>It is clarified that Bids are to be submitted as per the procedure prescribed in this Tender Document & e-procurement platform of APTS. The Bidders are advised to consult APTS helpline / office for any technical / procedural / web portal issues while submitting the Bids and the Authority will not be held responsible for any such technical / procedural / web portal issues while submitting the Bid.</i>
Date and Time of Opening Bids	16:30 Hrs. (IST) on DD-MM-YYYY or any other date intimated from time to time.
Date and Time of Financial Bids	To be intimated to Qualified Bidder
<i>Any Amendments/Addendum/Corrigendum, to this RFP, if any, shall not be advertised in newspapers, but shall only be posted on the website: www.apecurement.gov.in It shall be deemed that the Bidder has read all such Amendments/ Addendum/ Corrigendum, if any, prior to submission of its bid submitted in response to this RFP.</i>	

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Section-I: Instructions to Bidders (ITB)

1 LETTER OF INVITATION

Visakhapatnam Metropolitan Regional Development Authority (VMRDA), Visakhapatnam
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003

Date: **DDMMYYYY**

To,
All the prospective bidders,

Sub: Request for Proposal (RFP) for “Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis”

Dear Sir,

- i. The Visakhapatnam Metropolitan Regional Development Authority (VMRDA), (herein after also referred to as the “**Authority**”) is engaged in enforcement of Master plans and development plans and in the development of city infrastructure in the entire Visakhapatnam Metropolitan Region. As a part of its endeavor to keep up with the city’s pace of development and time to time needs for requisite infrastructure, including urban recreational, VMRDA has identified certain strategic land assets owned by it, that it intends to develop, in to landmark developments. One such land parcel admeasuring about **7.97 acres** (approx.) located along Beach Road, Visakhapatnam, Andhra Pradesh, India, has been identified for the development of a **Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities**. VMRDA envisages the development on a Public Private Partnership (PPP) basis.
- ii. The scope of work of the selected PPP Developer / Concessionaire will broadly include development of the Project facilities on Design, Finance, Build, Operate and Transfer (DFBOT) basis, which shall be transferred to VMRDA free of cost, at the end of the Concession Period, as per the terms of the Concession Agreement.
- iii. The Indicative Capital Cost of the Project (the “**Estimated Project Cost**”) is **₹240.00 Crore (Indian Rupees Two Hundred and Forty Crores only)**. However, there shall be no restrictions on higher investments, based on the Concessionaire’s independent market assessment, subject to development controls and guidelines and Coastal Regulation Zone (CRZ) regulations, as applicable from time to time. The Estimated Project Cost includes the Pre-Construction and Construction Costs, Project Development Fee & Interest during Construction etc. The assessment of actual costs, however, will have to be made by the Bidders.
- iv. In this regard, the Authority invites Request for Proposal (RFP) from eligible and interested parties / developers / investors / operators of eligible projects for development of the proposed project/development on PPP basis, for a **Concession Period of 33 years (excluding Construction Period of 3 (three) years) from the date of signing of the Concession Agreement, extendable, with Right of First Refusal (RoFR) and as per terms and conditions prevailing at that point of time.**

- v. The Preferred/Selected Bidder shall incorporate a Special Purpose Company under the Companies Act, 2013 to act as the Concessionaire (the “Concessionaire” or “Special Purpose Company” or “SPC”) and execute the Concession Agreement.
- vi. The RFP document comprises:

Section I	Instructions to Bidders (ITB)	
Section II	Formats for Bid Submission (FBS)	
	Part A:	Formats for Bid Submission
	Part B:	Formats for Technical Bid
	Part C:	Format for Price Bid
Section III	Technical Specifications (TS) & Development Controls (DC)	
Section IV	Draft Concession Agreement	

- vii. A **Project Information Memorandum (PIM)** is also issued along with the RFP document, to provide basic information of the Project Site / envisaged development and suggested project components. The same shall however not form part of the Bid Documents and the bidders are required to carry out their own independent assessment for submission of their Bid.
- viii. The **Bids comprising of Technical Bids and Price Bids shall be submitted in the online mode**, through the e-procurement portal of the Government of Andhra Pradesh. (www.apecurement.gov.in).
- ix. In addition, a Physical copy of the **Technical Bids only**, placed in an Outer Envelope along with Bid Security / Bank Guarantee and other required documents in Original, etc. as specified in the RFP, shall be also delivered into the Tender Box placed at the address given below between 11.00 hrs to 16.00 hrs on all working days, up to the Due Date for submission of Technical Bid in Physical Form:

To
The Metropolitan Commissioner
Visakhapatnam Metropolitan Regional Development Authority (VMRDA),
 7th Floor, Engineering Wing,
 Udyog Bhavan, Siripuram Junction,
 Visakhapatnam, Andhra Pradesh 530003

- x. While the online bids shall be required to be submitted prior to the prescribed Bid Due Date, the physical copy of the Technical Bids only should reach not later than **15.00 Hrs (IST)** on **DDMMYYYY**. In the event that the Due Date for the Technical Bid in Physical Form submission is a holiday, the next working day (at same time) will be the due date and time for submission. The Technical Bids (Online & Physical) would be opened at

16.30 Hrs on **DDMMYYYY** in the presence of the Bidder's authorised representatives (authorised in writing), who choose to attend the same. Non-submission of Online or Physical copy of Technical Bid shall lead to disqualification of the Bid.

- xi. In case Bidders need any further information about the Project or for inspection of any other documents related to the Project / Project Site, as available with VMRDA or want to visit the Project Site, they are requested to contact the following during working hours on all working days:

Visakhapatnam Metropolitan Regional Development Authority (VMRDA),
Office of Metropolitan Commissioner, 9th Floor
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003

Contact Nos: 7702333584 – Chief Engineer, 9885875888 – Project Section

- xii. The Bids shall be accompanied by a Bid Security of **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only)**, either in the form of a Demand Draft / Pay Order drawn in favor of “**The Metropolitan Commissioner, VMRDA**” and payable at Visakhapatnam, Andhra Pradesh or an unconditional and irrevocable Bank Guarantee from a Nationalised / Scheduled Bank (excluding Cooperative Banks), en-cashable at Visakhapatnam, Andhra Pradesh, in the format provided in this RFP.
- xiii. The Bid shall be filled in English and all entries must be typed and/ or written in blue/ black ink. The authorized representative of the Bidder must attest all erasures and alterations made while filling the Bid.
- xiv. Neither the Authority nor the project consultants shall be responsible for any costs or expenses or liabilities incurred by the Bidders in connection with the preparation and delivery of Bids, including costs and expenses, including related to the visits to the Project Site or for attending the pre-bid Conference. VMRDA reserves all the rights to cancel, terminate, change, or modify this procurement process and/or requirements of bidding or any of the conditions stated in the RFP, at any time without assigning any reason or providing any notice and without accepting any liability for the same.
- xv. A Pre-bid conference will be held **at 15.00 Hrs (IST) on DDMMYYYY**, at:

Visakhapatnam Metropolitan Regional Development Authority (VMRDA),
Conference Hall, 3rd Floor,
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003

- xvi. Bidders shall be provided with the option of participating in the Pre-bid Conference through Video Conference (VC). Such Bidders shall be required to make a formal request to the VMRDA vide email to **mcvmrda@gmail.com** latest by **DDMMYYYY**, mentioning the names and email ids of the persons intending to attend the same. VMRDA shall provide the VC link to such Bidders prior to the Pre-bid conference. VMRDA reserves its right to restrict admission to any unauthorized persons in attending the VC / Pre-bid Conference.
- xvii. Queries, if any, proposed to be raised at the pre-bid Conference by the Bidders should be

submitted to the Authority in writing or vide email to, **mevnrda@gmail.com**, atleast two (2) working days before the date of the Pre-bid Conference, in the format prescribed in clause 10 of this RFP.

- xviii. The Bid evaluation process is detailed in Instructions to Bidders (Section I of the RFP Document). The Technical Bids would be evaluated based on the Eligibility Criteria / qualification criteria set forth in the RFP along with the required undertakings. Price Bids (online) of only those firms, whose Technical Bids qualify, will be opened, and evaluated. The date of opening of Price Bids will be communicated in writing to the Technically Qualified Bidders. The Bidder, whose Bid is found to be highest, would be selected as 'Preferred Bidder' for award of the Project and executing the Concession Agreement with the Authority for the implementation of Project, upon fulfillment of the Letter of Award (LoA) conditions.
- xix. Please note that the VMRDA reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever and to annul the bid process at any stage.

**Metropolitan Commissioner
VMRDA**

DISCLAIMER

1. The information contained in this Request for Proposal document (the "**RFP**") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
2. This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their Bids, pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors or Project Consultants to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements, and information contained in the Project Information Memorandum (PIM), or may hereafter be provided by the Authority, in accordance with the provisions hereof, may not be complete, accurate, adequate, or correct. Further, the PIM is not a part of the RFP documents and is only for reference of the bidder. Each Bidder should therefore, before placing statements, and aforesaid assumptions, assessments, statements, data and information, furnished under this RFP or under the PIM etc referred to herein, by the Authority and/or any of its consultant, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and /or the PIM and obtain independent advice from appropriate sources in respect thereof. For avoidance of doubt, in case Bidder places reliance on any aforesaid assumptions, assessments, statements, data and information furnished by the Authority and/or its consultant, in this RFP and / or the PIM, then the same shall not in any manner bind/make liable the Authority and/or its consultant, to indemnify the Bidder in respect of any loss/damage/costs whatsoever arising out of or in connection with such reliance placed by the Bidder on the aforesaid assumptions, assessments, statements, data and information and the bid submitted by the Bidder.
3. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion of the law expressed herein.
4. The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid.

5. The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.
6. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
7. The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Preferred Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.
8. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.
9. The Bidders are prohibited from any form of collusion or arrangement in an attempt to influence the selection and award process of the Bid. Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the Bidder towards any officer/employee/ advisor/ representative of the Authority or to any other person in a position to influence the decision of the Authority for showing any favour in relation to this RFP or any other contract, shall render the Bidder to such liability/penalty as the Authority may deem proper, including but not limited to rejection of the Bid of the Bidder and forfeiture of its Bid Security.
10. Bidders are required to take note that the Project has been envisaged and RFP has been accordingly released based on certain assumptions and in anticipation of steps including but not limited to updating CRZ Maps, Tourism Plan, Coastal Zone Management Plan (CZMP) as per the CRZ Notification of 2019. While Bidders are required to take note of the same while preparation of its Bids, the Authority takes no responsibility of the date of notification of such revised CZMP or the applicability of the CRZ Notification of 2019 or the content of the CRZ Maps / Tourism Plan with respect to the Project Site and the same shall be at the sole risk and liability of the Selected Bidder. Further, the Authority takes no responsibility of the development potential considered by the Bidders in their Bids vis-à-vis the permissible developments from time to time, and it shall be the sole responsibility of the Selected Bidder to adhere to the Development Control Regulations as applicable to the Site from time to time. For the avoidance of doubt, it is clarified that the Bid submitted shall not be negotiable on account of certain envisaged developments by the Selected Bidder at the time of its Bids, not permitted by the APCZMA or other concerned Authorities as applicable.
11. Laws of the Republic of India and courts at Visakhapatnam / Andhra Pradesh State are applicable to this RFP.

2 BID SUMMARY

S. No	Key Information	Details
Project Details		
1	Project Title	Development of a Convention Centre with not less than 5 Star Category Hotel / Resort & other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis
2	Authority	Visakhapatnam Metropolitan Regional Development Authority (VMRDA), Visakhapatnam, Andhra Pradesh.
3	Project Site	7.97 Acres (approx.) of land along Beach Road at Visakhapatnam, Andhra Pradesh
4	Minimum Development Obligations (MDOs)	<p>1. Convention Centre & 5 Star Category Hotel / Resort Within Thirty Six (36) months* of the Agreement date, following shall be implemented:</p> <p>(i) A Convention Centre comprising:</p> <ul style="list-style-type: none"> a) Multi-purpose Convention Hall, air-conditioned Main Hall (with the ceiling of minimum 15 feet high; area to accommodate minimum 2500 persons in theatre-style seating) b) This multi-purpose hall shall have no fixed seating and shall be with partitions for flexibility in conducting multiple events simultaneously c) The multi-purpose hall must be capable of hosting and catering to Meetings, Events, Exhibitions of National & International level. <p>(ii) 5 Star category Hotel / Resort comprising:</p> <ul style="list-style-type: none"> a) Not less than 200 guest rooms b) Obtain not less than 5 Star category certification from the Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India, within 180 days of commencement of operations <p>2. Other Water Front Entertainment Facilities: Within Thirty Six (36) months* of the Agreement date, following shall be implemented:</p>

S. No	Key Information	Details
		<p>(i) Water Front Entertainment Facilities (in the form and manner as permissible under the applicable CRZ Norms) such as:</p> <ol style="list-style-type: none"> a) Shack Restaurant(s), Café(s) (with temporary structures / canopies, etc.) b) Party Lawns with landscaping / hardscaping (including Amphitheatre, etc) for outdoor events c) Flea Market d) Exhibition Venue <p>The above specified MDOs are subject to the Applicable Development Control Regulations as applicable from time to time.</p> <p>Further, in addition to the MDOs, the Concessionaire shall be permitted to develop any other additional tourism facilities as listed in the Andhra Pradesh Tourism Policy 2020-2025 (in the form and manner as permissible under the applicable CRZ Notification)</p> <p>*In case any of the MDOs that are currently not permissible as per the currently applicable Development Control Regulations / applicable CRZ Notification, the timeline for the implementation of the same shall commence from the date of such amendment / notification permitting the same.</p>
5	Other Obligations / Conditions	<ol style="list-style-type: none"> a. Adopt water conservation, water recycling & reuse, rainwater harvesting, if possible, zero discharge of wastewater; and also incorporate Energy efficient designs & utilities. b. The Project shall be user friendly and provide eased access to differently able persons to all the project facilities in accordance with “Persons with Disabilities Act, 1995” with subsequent amendments and ‘UN Convention for Rights of Persons with Disabilities (UNCRPD)’. c. Obtaining all the applicable statutory approvals, licenses and clearances shall be the responsibility of the

S. No	Key Information	Details
		Concessionaire.
6	Estimated Project Cost	<p>The Estimated Landed Project Cost for development as per the Minimum Development Obligations (MDOs) is ₹240.00 Crore (Indian Rupees Two Hundred and Forty Crore only).</p> <p>However, there is no restriction on higher investments based on the Concessionaire’s market assessment subject to applicable development controls.</p> <p>(Estimated Project Cost includes the Pre-Construction and Construction Costs, Project Development Fees & Interest During Construction etc.)</p> <p>The assessment of actual costs, however, will have to be made by the Bidders</p>
7	Development Controls & Regulations	<p>The Selected Developer shall undertake to develop the Project in conformity to the Development Control Regulations as applicable to the Project Site from time to time.</p> <p>As on current date, the following development control regulations shall apply:</p> <ul style="list-style-type: none"> ● G.O. Ms.No.119, MA&UD, dt. 28.03.2017 issued by Municipal Administration and Urban Development Department, GoAP ● G.O. Ms.No.136 dated 08.11.2021, MA&UD – VMRDA Perspective Plan 2051 & Master Plan 2041, and subsequent amendments, if any. ● Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2011[§] ● Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2019, as and when made applicable in the State of Andhra Pradesh, and subsequent amendments, if any ● A.P. Tourism Policy 2020-25 ● Any other rules / regulations of State, Central & Local Authorities <p><i>§Bidders are required to take note that the Government of Andhra Pradesh is in the process of taking up necessary steps including but not limited to updating CRZ Maps, Tourism Plan, Coastal Zone</i></p>

S. No	Key Information	Details
		<p><i>Management Plan (CZMP) as per the CRZ Notification of 2019 and the same shall be applicable to the Project Site from the date of such notification. Until such time the CRZ Notification of 2011 shall only be applicable. While Bidders are required to take note of the same while preparation of its Bids, VMRDA shall take no responsibility of the date of notification of such revised CZMP or the applicability of the CRZ Notification of 2019 or the content of the CRZ Maps / Tourism Plan with respect to the Project Site and the same shall be at the sole risk and liability of the Selected Bidder. Further, VMRDA shall take no responsibility of the development potential considered by the Bidders in their Bids vis-à-vis the permissible developments and it shall be the sole responsibility of the Selected Bidder to adhere to the Development Control Regulations as applicable to the Project Site from time to time. For the avoidance of doubt, it is clarified that the Bid submitted shall not be negotiable on account of certain envisaged developments by the Selected Bidder at the time of its Bids, not permitted by the APCZMA or other concerned Authorities.</i></p>
8	<p>Infrastructure Augmentation</p>	<p>Augmentation of the Internal Access Road (from Beach Road to the Project Site) Considering the access road of the Project Site being common access to the Project, the existing lighthouse and the beach front deck & activities proposed by VMRDA, the VMRDA has decided to widen the same from the existing 11 Mts. Width to 18 Mts. width, for ensuring smooth entry and exit to all user of the road.</p> <p>Further, while VMRDA will facilitate the demarcation, necessary permission and tree cutting etc., the widening and development of the road shall be in the role of the Selected Bidder and shall be taken up, prior to commencement of work at the Project Site.</p>
<p>Implementation Structure</p>		

S. No	Key Information	Details
9	Implementation Format	Public Private Partnership (PPP)
10	Concession Format	Design, Finance, Build, Operate and Transfer (“DFBOT”)
11	Institutional Structure for Implementation	Incorporation of a Special Purpose Company (SPC) under the Companies Act, 2013 by the Preferred/Selected Bidder (Sole Bidder/ Consortium), for the exclusive implementation of this Project
12	Concession Period	33 Years (excluding 03 (three) years Construction Period) from the date of execution of Concession Agreement, extendable, with Right of First Refusal (RoFR) and as per terms and conditions prevailing at that point of time.
13	Lease Period	33 Years (excluding 03 (three) years Construction Period) and co-terminus with the Concession Period including extensions, if any.
14	Project Completion Period	MDOs shall be completed within Thirty Six (36) months from the date of signing of Concession Agreement. However, in case of the MDOs that are currently not permissible as per the currently applicable Development Control Regulations / applicable CRZ Notification, the timeline for the implementation of the same shall commence from the date of such amendment / notification permitting the same.
Eligibility Criteria		
15	Minimum Technical Eligibility Criteria	<p>This invitation of Bid is open to all interested Bidders, who may either be a single entity ("Sole Bidder") or a consortium of maximum 2 (two) entities ("Consortium"), coming together to implement the Project.</p> <p>a. In the case of Sole Bidder, it shall have to meet the technical and financial eligibility requirements.</p> <p>b. In case of a Consortium, the Consortium members shall together satisfy the technical and financial eligibility requirements through any one of the below mentioned models:</p> <p>i. The Lead Member of the Consortium shall qualify the financial eligibility requirement and the other member of consortium shall qualify the technical eligibility requirement mentioned in the bid document (OR)</p>

S. No	Key Information	Details
		<p>ii. The Lead Member shall qualify (minimum) 50% of the financial eligibility requirement and other member shall each qualify (minimum) 25% of the technical eligibility requirement.</p> <p><u>Minimum Technical Eligibility:</u> The Bidder (Sole Bidder or the Consortium together), shall be required to meet the following:</p> <p>1. Experience eligibility criteria in “Eligible Project(s)” of cumulative value not less than ₹480 Crores (Indian Rupees Four Hundred Eighty Crore only), i.e twice the estimated project cost, from:</p> <p>a. <u>Development and/or construction experience, where:</u></p> <p>i) All the eligible projects shall have been executed <u>within past 10 (Ten) years</u> prior to the date of issuance of this RFP document.</p> <p>ii) Development shall mean responsibility for financing/investing in a project, and planning, designing, constructing, commissioning etc. of the Project directly or through a contractor.</p> <p>iii) Only such projects are considered eligible where the project cost is not less than ₹48 Crores (Indian Rupees Forty Eight Crore Only), i.e. 20% of the estimated project cost.</p> <p>Here, the “Eligible Project(s)” shall mean:</p> <p>i. <u>At least 50% of criteria for project experience should be met through either:</u></p> <p>a) MICE Projects/ Convention Centers/ Hotels / Resorts projects</p> <p>b) Any other Tourism Infrastructure Projects as defined in the Andhra Pradesh Tourism Policy 2020-25</p> <p>ii. <u>Whereas rest can be met through other and core sector projects such as:</u></p> <p>a) Shopping malls, Commercial Complexes, Multiplex, Office / IT Parks, Schools, Colleges, Hospitals, Government Buildings, sports complexes and real estate development (apartment complexes, etc, excluding plotted land</p>

S. No	Key Information	Details
		<p>development).</p> <p>b) Core Sector projects include power, telecom, ports, airports, railways, metro rail, industrial parks/estates, logistic parks, pipelines, irrigation, water supply, sewerage, etc.</p> <p>And/or</p> <p>b. <u>Collection and Appropriation of Revenues from operations of “Eligible Project(s)” where:</u></p> <p>i) All the revenues from the eligible projects shall be <u>within past 10 (Ten) years</u> prior to the date of issuance of this RFP document.</p> <p>ii) Only such project revenues are considered eligible which are not less than ₹48 Crores (Indian Rupees Forty Eight Crore Only), within the past 10 (Ten) years prior to the date of issuance of this RFP document.</p> <p>Here, the “Eligible Project(s)” shall mean:</p> <p>a) MICE Projects/ Convention Centers/ Hotels / Resorts projects</p> <p>b) Any other Tourism Infrastructure Projects as defined in the Andhra Pradesh Tourism Policy 2020-25</p> <p>2. As on the Bid Due Date, the Bidder (Sole Bidder / Consortium) shall be either Owning or Operating Hotel(s) in the category of not less than 5 Star (or equivalent) either nationally or internationally, such that the cumulative number of rooms shall not be less than 200 numbers, together in not more than 3 such Hotels.</p> <p><i>(for the avoidance of doubt, the Bidder shall be entitled to claim experience as per the definition of “Affiliate” specified in this RFP)</i></p>
16	Minimum Financial Eligibility Criteria	<p>The Bidder (Sole Bidder or the Consortium together) (subject to terms at Sl. No.15 hereof the Bid Summary), shall have to meet the following financial eligibility criteria for submission of RFP -</p> <p>A. Minimum Net–Worth</p>

S. No	Key Information	Details
		<p><i>(Subscribed and paid-up Share Capital + Reserves and Surplus) – (Revaluation Reserves + Miscellaneous expenditure not written off + Deferred Revenue Expenditure + Deficit in P & L Account if any)</i> of the Sole Bidder / the Consortium must be at least one fourth of the estimated project cost i.e. ₹60 Crore (Rupees Sixty Crore).</p> <p>The net worth should be certified by the statutory auditor /Chartered Accountant (CA).</p> <p><i>(Note - For the avoidance of doubt, Net Worth for the purpose of this RFP shall exclude any valuation of land asset holdings)</i></p>
17	<p>Qualifications through Affiliates (If any)</p>	<p>The Bidder (and in case the Bidder is a Consortium then each of the members of the Consortium) can draw upon the Technical Experience and Financial Capability of one or more of its Affiliates. In either case, the ownership relation between the Bidder and the Affiliate(s) must be explained.</p> <p>For purposes hereof, “Affiliate” means with respect to a specified Person, any Person which is a holding company or subsidiary of such specified Person, or any Person which directly or indirectly, (a) owns or controls such specified Person, (b) is owned or controlled by such specified Person, or (c) is owned or controlled by the same Person, who, directly or indirectly, owns or controls such specified Person. For the purposes of this Document, the terms "holding company" and "subsidiary" shall have the meaning ascribed to them under Section 2 of the Companies Act, 2013 and the term "control" shall mean:</p> <ol style="list-style-type: none"> i. Control over the composition of majority of board of directors of a company; or ii. Control of more than 50% (fifty percent) of the voting shares of such Person <p>and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.</p>
18	<p>Lock - In Period</p>	<ol style="list-style-type: none"> a. Lock – In period is defined as a period of five years post Commercial Date of Operations (CoD). b. Commercial Date of Operations is the date on which the project is open to Public on a commercial basis, after

S. No	Key Information	Details
		<p>due testing, trial running and commissioning, as more fully described in the Concession Agreement.</p> <p>i. In case of a Sole Bidder, it shall retain minimum of 51% as equity contribution in the SPC/SPV throughout the lock-in period.</p> <p>ii. In case of Consortium, the total equity contribution put together by the consortium members in the SPC formed, shall not be less than 51% throughout the lock-in period, subject to the equity contribution from each Member of the Consortium in the SPC formed, shall not be less than 26% throughout the lock in period.</p>
19	Annual Lease Rent (ALR) Amount	<p>a. The Annual Lease Rental shall be fixed as 1% of the SRO (Sub Registrar Office) value of the land (Project Site), as on the date of this RFP. The Annual Lease Rental would be payable from the date of handing over of Project Site to the Successful Bidder/ Concessionaire, as per the terms of the Concession Agreement.</p> <p>b. Accordingly, the Annual Lease Rental for the base year shall be ₹2,28,00,000 (Indian Rupees Two Crore Twenty Eight Lakhs Only), i.e., 1% of Sub-Registrar Office (SRO) Value of the land (7.97 Acres @₹28,55,60,000 per Acre (i.e. ₹59,000 per Square Yard)). Applicable taxes, including the GST on the above shall also be paid by the Concessionaire over and above the Annual Lease Rental.</p> <p>c. The Annual Lease Rental (ALR) shall be enhanced by 5% in a block of every 3 years for the entire Concession Period.</p> <p>d. The Concessionaire shall pay Annual Lease Rentals to the Authority commencing from the date of signing of Concession Agreement up to the end of the concession period / date of early termination, if any. The ALR shall be paid in advance, on a quarterly basis.</p>
20	Additional Development Premium (ADP) (BID PARAMETER)	<p>a. The parameter for bidding shall be the “Additional Development Premium (ADP)”, which shall be a percentage of Annual Gross Revenue of the Project or Minimum Annual Assured Amount, whichever is Higher.</p>

S. No	Key Information	Details
		<p>b. The bidder quoting the highest ADP shall be awarded the Project.</p> <p>c. The Preferred / Selected Bidder / Concessionaire shall be required to quote in its Bid (in the format provided for the Price Bid), the Additional Development Premium (ADP) that it will pay to the Authority, in each year, commencing from the 4th year of the Concession Period (the BID PARAMETER), for grant of the development rights for the Project to the Concessionaire.</p> <p>d. The ADP shall commence from the 1st year of operations / 4th year from the date of signing of the Concession Agreement, whichever is earlier, and shall be up to the expiry of the Concession Period or early termination. Applicable taxes, including the GST on the above shall also be paid by the Concessionaire. The ADP shall be quoted in terms of “%” (“Percentage”) of “Annual Gross Revenue” as well as in terms of “Minimum Annual Assured Amount”, for each year of the Concession Period. The ADP shall be payable in advance on a quarterly basis.</p> <p>e. The reserve value or the minimum ADP shall be not less than 5% in percentage terms. Further, the Minimum Annual Assured Amount shall be incremented atleast by an amount not less than 5% of the Minimum Annual Assured Amount, in a block of every 3 (three) years. Similarly, the ADP % shall not be less than that quoted for the previous year.</p> <p>Note - (Bids submitted with ADP lower than the minimum specified ADP shall be summarily rejected).</p> <p>For the purpose of evaluation of Price Bids and for determining the “Highest Bidder”, NPV of the quoted Minimum Annual Assured Amounts at a discount rate of 10% shall be computed.</p>
21	Bid Parameter	<p>a. The Additional Development Premium (ADP) quoted by the Bidders (in the format provided for the Price Bid) will be the Bid Parameter. The Bidder quoting the highest ADP shall be the Selected Bidder.</p> <p>b. The ADP shall commence from the 1st year of operations / 4th year from the date of signing of the Concession Agreement, whichever is earlier, and shall be up to the expiry of the Concession Period or early</p>

S. No	Key Information	Details
		<p>termination. Applicable taxes, including the GST on the above shall also be paid by the Concessionaire. The ADP shall be quoted in terms of “%” (“Percentage”) of “Annual Gross Revenue” as well as in terms of “Minimum Annual Assured Amount”, for each year of the Concession Period.</p> <p>c. The reserve value or the minimum ADP shall be not less than 5% in percentage terms. Further, the Minimum Annual Assured Amount shall be incremented atleast by an amount not less than 5% of the Minimum Annual Assured Amount, in a block of every 3 (three) years. Similarly, the ADP % shall not be less than that quoted for the previous year.</p> <p>d. For the purpose of evaluation of Price Bids and for determining the “Highest Bidder”, NPV of the quoted Minimum Annual Assured Amounts at a discount rate of 10% shall be computed.</p>
22	Bid Validity Period	180 days from the date of Bid submission
23	Bid Security	<p>a. ₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only), either in the form of a Demand Draft / Pay Order drawn in favor of “The Metropolitan Commissioner, VMRDA” and payable at Visakhapatnam, Andhra Pradesh or an unconditional and irrevocable Bank Guarantee from a Nationalised / Scheduled Bank (excluding Cooperative Banks), encashable at Visakhapatnam, Andhra Pradesh, in the format provided in this RFP.</p> <p>b. The Bid Security shall be refundable, interest free, as per the terms and conditions spelt out in this RFP.</p>
24	Validity for Bid Security (In case of Bank Guarantee)	240 days from the Bid submission date, inclusive of a claim period of 60 (sixty) days
Bid Submission		
25	Bid Submissions	<p>a. Bids comprising of the Technical Bid and Financial Bid shall be submitted in the online mode through the e-procurement portal of the Government of Andhra Pradesh.</p> <p>b. In addition, the physical copy of the <u>Technical Bids only along with the Original Bid Security, D.D. / Pay</u></p>

S. No	Key Information	Details
		<p><u>Order for RFP Document Fee and Other Documents</u> shall be submitted in a sealed envelope to the VMRDA prior to the prescribed Due Date for submission of the same.</p> <p>c. Bidders are required to take note that the <u>Price Bid / Financial Bid shall be submitted in the Online mode only</u> and any Price Bid received in the Physical copy shall lead to rejection of the Bid.</p> <p><i>(Note -For avoidance of doubt, submission of the Online Bid (Technical & Financial) and Physical Form (Technical Bid only) is a mandatory requirement as prescribed in this RFP. Failure to submit the Online Bid or Physical Form of Technical Bid, shall lead to disqualification of the Bid. However, for evaluation purpose, only documents submitted in the online mode shall be considered, subject to clarifications / supporting / substantiating documents that the VMRDA may choose to seek, at its exclusive discretion).</i></p>
26	<p>Technical Bid & Other Documents</p> <p>(Required to be submitted Online and in physical Form)</p>	<p>a Appendix A1 Covering Letter</p> <p>b Appendix A2 Checklist of Submissions</p> <p>c Appendix A3 Covering letter for submitting the Bid Security and D.D. / Bank Guarantee for Bid Security as per the Bank Guarantee format.</p> <p>d Appendix A4 Letter of Undertaking</p> <p>e Appendix A5 Commitment to pay Annual Lease Rentals, ADP, Project Development Fee and Performance Security Bank Guarantee</p> <p>f Appendix A6 Consortium Agreement (In case Bidder is a Consortium)</p> <p>g Appendix A7 Power of Attorney for Appointing the Lead Member (In case Bidder is a Consortium)</p> <p>h Appendix A8 Power of Attorney for the Bid Signatory</p>

S. No	Key Information	Details
		<p>i Appendix A9 Statement of Legal Capacity</p> <p>j Appendix B1 General Information of the Bidder</p> <p>k Appendix B2 Financial Data</p> <p>l Appendix B3 Technical & Financial Capacity (along with necessary annexures)</p> <p>m Appendix B4 Letter of Undertaking for Technical Bid</p> <p>n Demand Draft / Pay Order towards RFP Document Fee of ₹1,00,000</p> <p>o Signed RFP document along with Response to Pre-Bid Queries and Addenda / Corrigenda, if any</p> <p><i>Note: The above details are to be submitted as per the formats given in the Section II of the RFP document.</i></p>
27	RFP Document Fee	<p>₹1,00,000 (Indian Rupees One Lakh only) through a Demand Draft / Pay Order, drawn from Nationalized/ Scheduled Bank in favor of “The Metropolitan Commissioner, VMRDA” and payable at Visakhapatnam. (The original D.D. / Pay Order shall be submitted in the physical copy submission and the scanned copy of the D.D. / Pay Order shall be submitted in the Online Bid)</p>
28	Financial Bid / Price Bid	<p>The bidders shall be required to submit their Financial Bid / Price Bid only through Online mode, comprising the following:</p> <p>(i) In the format (Appendix C1) as provided in the RFP Section II duly filled, Printed on Letter Head of the Bidder / Lead Member of the Consortium, signed, stamped and scanned.</p> <p>(ii) Net Present Value (NPV) of the quoted Minimum Annual Assured Amounts at a discount rate of 10%, to be inserted in the Bid Value window of the Financial Bid / Price Bid module of the aprocurement portal. The NPV shall be as calculated in MS Excel, by applying the formula: NPV(10%, [Min. Assured ADP Construction Period Year 1]: [Min. Assured ADP Year 33])</p>

S. No	Key Information	Details
		<p><i>Notes –</i></p> <p>(i) The ADP quoted in the aprocurement shall be deemed to be excluding applicable GST, that shall be payable extra by the Selected Bidder.</p> <p>(ii) Submission of Financial Bid in the physical format shall lead to rejection of the Bid.</p> <p>(iii) The decision of the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by the Bidder in each year, as scanned and submitted in the Financial Bid / Price Bid. Accordingly, VMRDA reserves the right to edit and correct the Auto-populated results for the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.</p>
Bid Evaluation		
29	Bid Evaluation	<p>a. Technical Bid & Other Documents (as per Sl. No.26 above): Mandatory Compliance</p> <p>b. Technical Bid: Compliance - Pass/Fail</p> <p>c. Financial Bid: Highest Net Present Value (NPV) of the absolute figures for Minimum Annual Assured Amount quoted by the Bidders as “Additional Development Premium” over the concession period to VMRDA. The reserve value or the minimum ADP shall be not less than 5% in percentage terms. Further, the Minimum Annual Assured Amount shall be incremented atleast by an amount not less than 5% of the Minimum Annual Assured Amount, in a block of every 3 (three) years. Similarly, the ADP % shall not be less than that quoted for the previous year.</p> <p>For the purpose of evaluation of Price Bids and for determining the “Highest Bidder”, NPV of the quoted Minimum Annual Assured Amounts at a discount rate of 10% shall be computed.</p> <p>Note - Bids submitted with ADP lower than the minimum specified ADP shall be summarily rejected.</p> <p><i>The decision of the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by the Bidder in each year, as scanned and submitted in the Financial Bid / Price Bid. Accordingly, VMRDA reserves the right to edit and correct the Auto-populated results for</i></p>

S. No	Key Information	Details
		<i>the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.</i>
30	Letter of Award	Letter of Award (LoA) will be issued to the Preferred/ Selected Bidder after approval by competent authority of VMRDA. Within 30 days of issuing LoA, the preferred bidder needs to fulfill the LoA conditions.
31	Performance Guarantee (For construction period)	<p>Preferred / Selected Bidder shall furnish a performance bank guarantee of 2.5% of the estimated project cost i.e., ₹6,00,00,000 (Indian Rupees Six Crores Only) to the Authority upon receipt of Letter of Award and before the signing of Concession and Lease Agreement (as per the format prescribed as part of the RFP / Concession Agreement). The Performance Guarantee will be released to the Concessionaire once the Project Completion is achieved as per the MDOs and commercial operations commenced. The validity of Performance Guarantee shall be 4 years.</p> <p>The submission of Performance Guarantee shall be a pre-condition in the LoA, which shall be required to be fulfilled within 30 days of issuance of LoA.</p>
32	Project Development Fees	<p>The Preferred / Selected Bidder shall be required to pay a non-refundable Project Development Fee of ₹4,80,00,000 (Indian Rupees Four Crore Eighty Lakhs only) plus GST at 18%, that shall be paid in the following two parts:</p> <p>(i) ₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%, if applicable, drawn in favor of “The Metropolitan Commissioner, VMRDA” in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable at Visakhapatnam.</p> <p>(ii) ₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%, drawn in favor of “Andhra Pradesh Urban Infrastructure Asset Management Limited” in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable of Vijayawada.</p> <p>The payment of Project Development Fees shall be a pre-condition in the LoA, which shall be required to be fulfilled within 30 days of issuance of LoA.</p> <p>Payment of Project Development Fees is a precondition for further processing / signing of Concession Agreement. Non-payment of Project Development Fee</p>

S. No	Key Information	Details
		shall lead to non-compliance to LoA terms and forfeiture of Bid Security.
33	Signing of Concession Agreement	<p>The Concession Agreement shall be executed not later than 30 days upon meeting the following LoA conditions:</p> <ul style="list-style-type: none"> (i) Submission of irrevocable and unconditional Performance Security (Bank Guarantee) as mentioned in the RFP (ii) Payment of Project Development Fee (iii) Payment of 1st Quarterly Advance Lease Rentals in accordance with the terms of the RFP and the LoA (iv) Incorporation of a Special Purpose Company (SPC) under the Companies Act, 2013 for exclusive implementation of the project.
34	Review of Project During Construction	<p>An Independent Engineer shall be appointed by the Authority to review the project during the Construction Period, as per provisions of the Concession Agreement. However, the remuneration of the Independent Engineer shall be reimbursed by the Concessionaire to the Authority.</p> <p>VMRDA reserves its discretion to appoint APUIAML as the Independent Engineer for the Project.</p>
35	Bank Guarantee towards Lease Rental (for operations period)	<p>Upon achieving Commercial Operation Date & before release of construction period Performance Security, the Concessionaire shall be required to provide a Bank Guarantee (BG) as security for the payment of the Annual Lease Rentals. Such BG shall be equivalent to the Annual Lease Rental to be payable by the Preferred Bidder for the 6th year of the Concession Period. Thereafter, the Concessionaire shall submit fresh BGs once in every three years, as mentioned in the RFP, until the end of the Concession Period.</p>
E-procurement transaction fees and Corpus Fund		
36	e-procurement / APTS Transaction Fees	<p>Bidder shall be required to pay the APTS Transaction Fees as applicable, through the e-procurement website in the online payment mode or other payment modes, if any, prescribed by the APTS.</p>

S. No	Key Information	Details
37	Corpus Fund payment	Corpus Fund: The Selected Bidder shall be required to pay an amount of 0.04% of the Project Cost through aprocurement portal towards the corpus fund at the time of issuance of Letter of Award to the Successful Bidder. This shall be a precondition for the issuance of LoA and non-payment of the Corpus Fund Payment shall lead to non-compliance to RFP conditions and forfeiture of Bid Security.

3 DEFINITIONS AND INTERPRETATION

3.1 Definitions

- ii. **‘Advisor’ or ‘Project Consultant’** shall mean Andhra Pradesh Urban Infrastructure Asset Management Limited (APUIAML);
- iii. **‘Agreement’ or ‘Concession Agreement’** shall mean the Concession Agreement that shall be entered into between VMRDA, the Concessionaire and the Preferred Bidder (as a confirming party);
- iv. **“Affiliate”** means with respect to a specified Person, any Person which is a holding company or subsidiary of such specified Person, or any Person which directly or indirectly, (a) owns or controls such specified Person, (b) is owned or controlled by such specified Person, or (c) is owned or controlled by the same Person, who, directly or indirectly, owns or controls such specified Person. For the purposes of this RFP Document, the terms "holding company" and "subsidiary" shall have the meaning ascribed to them under Section 2 of the Companies Act, 2013 and the term "control" shall mean:
 - (ii) Control over the composition of majority of board of directors of a company;
or
 - (iii) Control of more than 50% (fifty percent) of the voting shares of such Personand with respect to a Person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- v. **‘Additional Development Premium’** means the percentage share of Annual Gross Revenue of the Project or Minimum Annual Assured Amount, whichever is higher, as quoted by the Preferred / Selected Bidder in its Bid, that shall be payable by the Concessionaire to the Authority as per the terms of this RFP / Concession Agreement;
- vi. **‘Annual Lease Rental’** means the lease rental payable annually by the Concessionaire to the Authority pursuant to the Lease Deed, as fixed in this RFP document and the Concession Agreement;
- vii. **‘Authority’** shall mean Visakhapatnam Metropolitan Regional Development Authority (VMRDA);
- viii. **‘Bid’ or ‘Proposal’** shall mean the Bid submitted by the Bidder in response to the RFP including clarifications and/or amendments to RFP / Concession Agreement, if any;
- ix. **‘Bid Security’** shall mean the security furnished by the Bidder in the form as stipulated in the RFP document;
- x. **‘Bidder’** shall mean who has responded to the RFP and submitted his Bid in response to the RFP;

- xi. **‘Bid Evaluation Committee’** shall mean the committee constituted by the Authority for evaluating the Bids, if so decided;
- xii. **‘DFBOT’** shall mean Design, Finance, Build, Operate and Transfer;
- xiii. **‘Capability Statement’** shall mean all the statements along with all the necessary supporting documents submitted by the Bidder as part of the Bid in its Technical Bid to substantiate the Eligibility of the Bidder vis-à-vis the Technical and Financial Eligibility Criteria set forth in this RFP;
- xiv. **‘Commercial Operation’** means the use of the Project Facilities for commercial purposes by the levy, charging, demanding, collecting, realizing, retaining, and appropriating of Tariff, etc.;
- xv. **‘Commercial Operation Date’ or ‘COD’** means the date on which the Authority issues the Project Completion Certificate, which is required to be achieved by the Concessionaire within thirty-six months of the date of execution of the Concession Agreement;
- xvi. **‘Concessionaire’** shall mean the Special Purpose Company (SPC) incorporated by the Preferred Bidder/ Selected Bidding Consortium who has been selected and nominated by the VMRDA to develop the Project on the terms and conditions stipulated in the RFP / Concession Agreement;
- xvii. **‘Confirming Party’ or ‘Confirming Parties’** means the Preferred Bidder who shall be a single entity or a Consortium of entities, who shall be jointly and severally be responsible for the Project, apart from the Concessionaire and shall be party(ies) to the Concession Agreement;
- xviii. **‘Completion Certificate’** means the certificate issued by the Authority in the manner set out as per terms of RFP / Concession Agreement;
- xix. **‘Concession Period’ or ‘Contract Period’** shall mean the period of 33 years (excluding construction period of 3 years) from the date of Signing of the Concession Agreement;
- xx. **‘Consortium’** shall mean the two of legally constituted entities, which have come together, have agreed, or have formed an understanding (in writing) for implementing the Project, subject to the terms of this RFP;
- xxi. **‘Consortium Agreement’** shall mean a binding agreement to be entered into amongst the members of the Consortium and forming part of their Bid;
- xxii. **‘Constituent Member’** shall mean any member of the Bidding Consortium, whose financials and/or project related experience have been taken into account in the Capability Statement to meet the Eligibility Criteria and who shall be required to commit to hold minimum 26% of the equity in the Concessionaire /Project SPC until the completion of the Lock-in period;
- xxiii. **‘Construction Period’** means the period from the date of execution of the Concession Agreement up to the date of Project Completion and Commercial Operations Date (i.e., when the Completion Certificate has been issued for all the

Project Facilities specified in the Minimum Development Obligations), which shall be not exceeding 03 (three) years;

- xxiv. **‘Developer’** shall have the same meaning as ascribed to the term Concessionaire;
- xxv. **‘Due Date’** shall mean the last date for submission /receipt of the Bid, as mentioned in the RFP document;
- xxvi. **‘Eligibility Criteria’** shall mean the criteria stipulated in the RFP in the form of minimum Technical and Financial Criteria, which is required to be met by the Bidder based on his Capability Statement and documents to become eligible for opening and evaluation of his Technical Bid;
- xxvii. **‘Financial Bid’ or ‘Price Bid’** shall have the meaning as set forth in the RFP documents;
- xxviii. **‘Financial Year’** shall mean year starting from 1st April to 31st March. In case Bidder’s financial /accounting years are different from the above, the immediate past financial/ accounting years of the Bidders as per their annual reports shall be applicable for the evaluation;
- xxix. **‘Firm/Company’** shall mean a single legal entity, which is a Registered Body, Government Agency, or Statutory Body;
- xxx. **‘Lead Member’** shall mean in case of a Consortium, the firm nominated to act as Lead Member of the Consortium at the RFP stage, which qualifies as per the Eligibility Criteria, and which shall continue to be the leader and be authorized as such for submission of Bid. The Lead Member will represent the Consortium on all matters pertaining to the RFP and shall have the primary responsibility of developing and implementing the Project. Notwithstanding the same, the Consortium members shall be jointly and severally responsible for the Project;
- xxxi. **‘Lease Deed’ or ‘Lease Agreement’** shall mean an agreement/ deed entered into by and between the Authority, the Concessionaire, and the Preferred Bidder;
- xxxii. **‘Lenders’** shall mean any person(s) / firm(s) based in India or abroad providing financial assistance, loans, funds, or other credit facilities to the Concessionaire under any financing agreements;
- xxxiii. **‘Letter of Award’ or ‘LoA’** shall mean the letter to be issued by the Authority to the Preferred Bidder conveying intention of award of the Project/ Concession, in accordance with the terms of this RFP;
- xxxiv. **‘Minimum Development Obligations’ or ‘Essential Project Facilities’** shall mean the Minimum Development Requirements to be met by the Preferred Bidder / Concessionaire in implementation of the Project; the details of the Minimum Development Obligations are specified in the RFP and draft Concession Agreement;
- xxxv. **‘Operations Period’** means the period commencing from COD and ending on the expiry or prior termination of the Concession Agreement / Concession Period;

- xxxvi. ‘Power of Attorney’** shall mean the Power of Attorney in the format provided in RFP, to be furnished by the Bidder authorizing a person to sign the Bid and act for and on behalf of the Bidder during the bidding process;
- xxxvii. ‘Preferred Bidder’ or ‘Selected Bidder’** shall mean the successful Bidder, whose Bid is declared as the highest evaluated Bid as a result of the Bid evaluation process as set forth in this RFP document;
- xxxviii. ‘Project’** means, development of a Convention Centre and 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis and subject to the provisions of this RFP and Agreement;
- a) Designing, obtaining all Project Approvals from concerned Authorities, Financing, Completion, Commissioning, Marketing, management, operation and maintenance and commercial use of the Minimum Development Obligations of the Project / Project Facilities, execution of the Works and all activities incidental thereto, such as commissioning and insurance etc., by the Concessionaire during the Contract Period;
 - b) Demanding, charging, collecting, retaining, and appropriating and revision of Tariff by the Concessionaire at market driven rates; and;
 - c) Transfer of the Project/Project Facilities by the Concessionaire to the Authority or its nominated agency at the end of the Contract Period by efflux of time or prior termination;
- xxxix. ‘Project Agreements’** shall mean Concession Agreement, Lease Agreement and any other legal documents as mutually agreed to between the Authority and the Preferred Bidder, necessary for implementing the Project;
- xl. ‘Project Completion Period’** shall mean the total period in which the construction of MDOs is completed and certified by Authority;
- xli. ‘Project Cost’** shall mean the total cost of Project. The components would include the costs incurred for carrying out the Project related activities such as formulation, development, design, engineering, finance, construction, interiors, air conditioning, etc;
- xlii. ‘Project Revenue’** shall refer to and include any and all revenues ((excluding taxes collected and remitted to the Government) from all sources or amounts of money and the total receipts of business of the Concessionaire that arise, accrue to and/or are received (or which would have been received) from the operation of Project including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to revenues from guests including for room tariff, restaurants, etc.;, visitors, persons utilizing the facilities, bookings/rentals for the venue(s), entry fees, revenues to the concessionaire from the Project / Project Facilities, interest earned on refundable deposits, parking, entry fee, etc;
- xliii. ‘Performance Security’** shall mean the irrevocable & unconditional Bank

Guarantee furnished by the Preferred Bidder prior to the signing of Concession Agreement;

- xliv.** **‘Request for Proposal’** or RFP shall mean the Bid documents comprising Sections I to IV and any other addenda issued thereon;
- xliv.** **‘Revenue Share’** shall mean the amount equivalent to the share in the Project Revenue (as quoted by the Bidder / Preferred Bidder and shall be payable by the Concessionaire as per the terms of this RFP / Concession Agreement) during the Financial Year, commencing from the date of commencement of Commercial Operations of the Project / Project Facilities or commencement of 4th year from the date of signing of the Concession Agreement, until the expiry of the Concession Period or early termination;
- xlvi.** **‘Lease Rental’** shall mean the Annual Lease Rental amount payable by the Concessionaire to the Authority during the Concession Period;
- xlvii.** **‘Special Purpose Company’** or **‘SPC’** shall mean the company to be set up by the Preferred Bidder/Developer, if required, for the purposes of exclusive implementation of the Project under Companies Act, 2013;
- xlviii.** **‘Special Purpose Vehicle’** or **‘SPV’** shall have the same meaning as described to the term SPC;
- xlix.** **‘Request for Proposal’** or **‘RFP’** shall mean the Bid documents comprising Section I to IV;
- i.** **‘Taxes and Duties’** shall mean all taxes, duties, fees etc. payable as per applicable laws in India in connection with the development, operation and management of the Project;
- ii.** **‘Technical Criteria’** shall mean the criteria stipulated in the RFP, which is required to be complied by the Bidder based on his Technical Bid to become eligible for opening and evaluation of his Price Bid;

3.2 Interpretation

In the interpretation of this RFP, unless the context otherwise requires:

1. The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
2. Reference to any gender includes the other gender;
3. Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Sub-paragraph, Annex, Exhibit, Attachment, Schedule, or Recital is a reference to a Clause, Sub-Clause, Paragraph, Sub-paragraph, Annex, Exhibit, Attachment, Schedule, or Recital of this RFP;
4. A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the

same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed, or extended, from time to time, in accordance with the terms thereof;

5. The terms “include” and “including” shall be deemed to be followed by the words “without limitation”, whether or not so followed;
6. Any reference to a person shall include such person’s successors and permitted assignees;
7. A reference to a “writing” or “written” includes printing, typing, lithography and other means of reproducing words in a visible form;
8. Any date or period set forth in this RFP shall be such date or period as may be extended pursuant to the terms of this RFP;
9. A reference to “month” shall mean a calendar month, a reference to “week” shall mean a calendar week and a reference to “day” shall mean a calendar day, unless otherwise specified;
10. The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this RFP mean and refer to this RFP and not to any particular Article, Clause, or Section of this RFP. The terms "Article", "Clause", “Paragraph” and “Schedule” mean and refer to the Article, Clause, Paragraph and Schedule of this RFP so specified;
11. In case of any conflict, discrepancy, or repugnancy between the provisions of RFP documents, provisions of the Concession Agreement shall prevail over and supersede the provisions of other documents;
12. The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement;
13. All capitalized words and expressions used in the RFP but not defined therein shall have the same meaning as ascribed to them in the Agreement;

4 GENERAL INFORMATION AND INSTRUCTIONS

4.1 Contents of the RFP Document

The RFP documents are those stated below, and should be read in conjunction with any Addenda issued in accordance with Sub-clause

- Section I** : Instruction to Bidders
- Section II** : Formats for Bids Submission (Appendices)
- Section III** : Development Controls and Technical Specification
- Section IV** : Draft Concession Agreement

4.2 Introduction to RFP

- 4.2.1 This section should be read in conjunction with other sections of RFP. The words and expressions, which are defined in the Instructions to Bidders (ITB), have the same meaning when used in the other sections of RFP, unless separately defined.
- 4.2.2 The ITB sets out the bidding procedure and provides necessary details for the Bidders to prepare their Bid for the proposed Project. The prescribed formats for submission of Bids are annexed to the RFP as Section-II.
- 4.2.3 The Bidders are advised to submit their Bids complying with the requirements stipulated in the RFP document. The Bids may be rendered disqualified in case of receipt of incomplete Bids and/or the information is not submitted as per the prescribed formats.
- 4.2.4 A Bidder is eligible to submit only one Bid pursuant to this RFP. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid for the same project either individually or as a member of any Consortium, as the case may be.
- 4.2.5 Salient details of the Project are provided along with the RFP as “Project Information Memorandum (PIM)” document, which includes Project assumptions, details, schematic plans etc. The PIM for the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations, and other detailed examination before submitting their Bids. Nothing contained in the PIM shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the PIM. For the avoidance of doubt, the PIM shall not be construed as part of the RFP documents.

4.2.6 Minimum Development Obligations (MDOs):

4.2.6.1 Convention Centre with not less than 5 Star Category Hotel / Resort

Within Thirty Six (36) months* of the Agreement date, following shall be implemented:

(i) **A Convention Centre comprising:**

- a) Multi-purpose Convention Hall, air-conditioned Main Hall (with the ceiling of minimum 15 feet high; area to accommodate minimum 2500 persons in theatre-style seating)
- b) This multi-purpose hall shall have no fixed seating and shall be with partitions for flexibility in conducting multiple events simultaneously
- c) The multi-purpose hall must be capable of hosting and catering to Meetings, Events, Exhibitions of National & International level.

(ii) **A not less than 5 Star category Hotel comprising:**

- a) Not less than 200 guest rooms
- b) Obtain not less than 5 Star category certification from the Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India, within 180 days of commencement of operations

4.2.6.2 Other Water Front Entertainment Facilities:

Within Thirty Six (36) months* of the Agreement date, following shall be implemented:

(i) Water Front Entertainment Facilities (in the form and manner as permissible under the applicable CRZ Norms) such as:

- a) Shack Restaurant(s), Café(s) (with temporary structures / canopies, etc.)
- b) Party Lawns with landscaping / hardscaping (including Amphitheatre, etc) for outdoor events
- c) Flea Market
- d) Exhibition Venue

The above specified MDOs are subject to the Applicable Development Control Regulations as applicable from time to time. Further, in addition to the MDOs, the Concessionaire shall be permitted to develop any other additional tourism facilities as listed in the Andhra Pradesh Tourism Policy 2020-2025 (in the form and manner as permissible under the applicable CRZ Notification)

*Note - *In case of the MDOs that are currently not permissible as per the currently applicable Development Control Regulations / applicable CRZ Notification, the timeline for the implementation of the same shall commence from the date of such amendment / notification permitting the same.*

4.2.7 **Other Obligations / Conditions:**

- a. Adopt water conservation, water recycling & reuse, rainwater harvesting, if possible, zero discharge of wastewater; and also incorporate Energy efficient designs & utilities
- b. The Project shall be user friendly and provide eased access to differently able persons to all the project facilities in accordance with “Persons with Disabilities Act, 1995” with subsequent amendments and ‘UN Convention for Rights of Persons with Disabilities (UNCRPD)’
- c. Obtaining all the applicable statutory approvals, licenses and clearances shall be the responsibility of the Concessionaire

4.3 **Scope of BID**

The Bidders are required to submit their Bids in two separate parts, i.e., Technical Bid and Financial / Price Bid through the aprocurement portal of the government of Andhra Pradesh prior to the specified Bid Due Date and time. In addition, the Bidder shall be required to submit the Technical Bid and Other Original Documents specified in physical form before the specified date and time to the address specified in this RFP.

4.3.1 **Other Documents**

Other Documents comprises of Covering letter, Bid Security of ₹2,40,00,000 (Indian Rupees Two Crore Forty lakhs only), Power of Attorney for signing the Application, Power of Attorney for Lead Member of Consortium, Consortium Agreement (in case of a Consortium), RFP Document Fees, Signed RFP document along with annexure, addenda and supporting documents.

4.3.2 **Technical Bid**

The Technical Bid comprises of Capability Statements of the Bidder, including supporting documents, wherever applicable, and Project Undertakings for meeting the Minimum Development Obligations, Development Controls and Technical Specifications, CRZ norms, environmental norms, applicable permits etc. (Refer Section-II of the RFP for the Formats).

4.3.3 **Financial / Price Bid**

The Financial / Price Bid (Refer to Section II of the RFP for the Formats) shall be submitted in Online mode only, through the aprocurement portal of the government of Andhra Pradesh prior to the specified Bid Due Date and time. Any Physical form of bid comprising of Financial / Price Bid shall be summarily rejected.

4.4 **Bidder’s Responsibility for Data**

- 4.4.1 While preparing the Bid, the Bidder shall consider the information provided in this RFP in totality.
- 4.4.2 The technical details given in Section III of RFP are based on the site status and assumptions of the Authority or its consultants / Advisors. However, the Bidders shall be wholly responsible for all the details of their Bids, the physical and site conditions, market assessment, project viability, etc. In essence, after the Bid is submitted, the Bidder shall be the ‘owner’ of all the data, which forms the basis of the Bid and shall have no

claims whatsoever on the Authority or its agencies regarding the accuracy of the data or designs, drawings, concepts plans, project components, viability, etc. furnished in the RFP.

- 4.4.3 The bidder shall carry out any surveys, investigations, technical and financial assessments, due diligence on applicable bye-laws, development control regulations (including but not limited to CRZ), etc. at its own cost and risk.

4.5 Bidder's Eligibility Criteria

4.5.1 General Eligibility

- a. This invitation of Bid is open to all interested Bidders, who may either be a single entity or a Consortium of maximum two entities, coming together to implement the Project.
- b. All Bidders who submit their Bid in the prescribed format as per the RFP will be considered, subject to their meeting the specified eligibility criteria set forth in the RFP.
- c. Bids submitted by a Consortium shall comply with the following requirements:
 - i. Execute a binding Consortium Agreement duly signed by both the members of the Consortium and shall be submit this along with the Bid. The members shall nominate one of the members of the Consortium thereof as the Lead Member (subject to fulfilling the conditions stipulated in the RFP).
 - ii. The Consortium Agreement shall clearly state the roles & responsibilities proposed to be shared, among the members of Consortium during the project execution and implementation. The Consortium Agreement shall convey the intent of the members to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the necessary Lease Agreement and the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement in case the concession to undertake the Project is awarded to the Consortium.
 - iii. The Lead Member shall be authorized by the other member of the Consortium to act for and on behalf of the Consortium, including interacting with the Authority or its authorized representatives.
 - iv. The Lead Member and other Consortium member shall be jointly and severally liable for the implementation of the Project in accordance with the terms of the Concession Agreement, and a statement to this effect shall be included in the Consortium Agreement.
 - v. All the information as per the requirements of the RFP shall be provided to the lead member of the Consortium.
 - vi. The Bid shall be legally binding on all the members of the Consortium.
 - vii. No member of the Consortium shall be changed after submission of the Bids/signing of the Concession Agreement.
 - viii. The Bids would be evaluated based on the details and data furnished. The authority's decision regarding Bidder's eligibility or otherwise shall be final

and binding.

- d. The Bidders shall provide evidence of their continued eligibility in a manner that is satisfactory to the Authority and the Authority may request the Bidders for the same till signing of the Concession Agreement.
- e. Bidders may be required to periodically update (at times to be notified by the Authority) the information submitted in their Capability Statement with regard to the following Evidence of availability of financial resources:
 - i Audited Balance sheets including the effect of known commitments.
 - ii Commitments of other works awarded since submitting the Bid.
 - iii Any other information that might be requested.
 - iv Any information known to the Bidder that may affect its ability to perform the contractual obligation.
- f. A Bidder may be disqualified if it is determined by the Authority, at any stage of the bidding process that the Bidder fails to continue to satisfy the Eligibility Criteria and Technical Criteria (Minimum Technical & Financial Eligibility Criteria). Supplementary information or documentation regarding the criteria may be sought from the Bidders at any time and the same shall be so provided within the time frame stipulated by the Authority.
- g. Any entity which has been barred by the Central/ State Government or any entity controlled by them in India or abroad, from participating in any project (BOT/DFBOT or otherwise), and the bar subsists as on the bid due date or had been imposed at any time in the last three (3) years immediately prior to the Bid Due Date, would not be eligible to submit a Bid. In case of a foreign entity, the same should not have been barred in the jurisdiction of its incorporation or at any other place where such foreign entity shall have undertaken any projects/ assignments, by any public or other authority in the last three (3) years immediately prior to the Bid Due Date.
- h. A Bidder or Affiliate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, or Affiliate thereof, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Affiliate thereof.
- i. If the Bidder has submitted any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), power of attorney(s), undertaking(s), documentary evidence(s), qualifying document(s), etc. (collectively "Foreign Documents") then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/ embossed/ legalized/ notarised from the Indian Embassy/Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/ embossment/ legalization/ notarisation from the Indian Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/ authorized /qualified Translator, supported by the

affidavit of the said translator, certifying the correctness of the English translation. In case of any inconsistency between the original Foreign Document and its English translation, the latter shall prevail and be held binding on such Bidder.

- j. However, in the case of Foreign Document(s) created or originating from countries that have signed, ratified, and have made operational the Hague Convention abolishing the requirement of legalization for foreign public documents, 5 October 1961 - "Hague Legalization Convention, 1961", the Bidders may affix an 'Apostle' sticker on each and every page of their Foreign Document(s) [including all commercial document(s) duly notarized]. Thereafter, the Bidder shall be compulsorily required to get all such "Apostilled" Foreign Document(s) approved, certified, and attested from the Indian Embassy /Indian High Commission in that country where the 'Foreign Document(s)' were created or are originated from or the Ministry of External Affairs, Government of India, New Delhi and the Bidder/s shall follow any other norms/guidelines laid by the Ministry of External Affairs, Government of India, New Delhi.

4.5.2 Minimum Equity Commitment

The Preferred / Selected Bidder shall be required to incorporate a Special Purpose Company under the Companies Act, 2013 prior to signing of the Concession Agreement. The Preferred / Selected Bidder as a whole shall hold a minimum of 51% of the paid-up equity share capital of the Concessionaire at all times during a period that shall not be less than 05 years from the Commercial Operations Date (COD) i.e., the Lock-in-Period. In case of Preferred Bidder being a Consortium, the Consortium together needs to hold a minimum of 51% of the shareholding of the Concessionaire. In case of Consortium, each Member shall hold at least 26 per cent of the paid-up equity share capital of the Concessionaire for a period that shall not be less than 05 years from the commercial operations date (COD) i.e., the **Lock-in-Period**. No change in composition of the Preferred Bidder/Consortium shall be made for a period of 05 years (the "Lock-in Period") from the commercial operations date (COD). Any transfer of such share capital after such 05 years shall require the prior written approval of the Authority, which shall not be unreasonably denied. In case the Authority fails to respond with valid reasons in 60 days of the communication received from the Concessionaire, it can be treated as deemed approval.

4.5.3 Conflict of Interest

- 4.5.3.1 A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (1) The Bidder, its Member or Associate or Affiliate (or any constituent thereof) and any other Bidder, its Member or any Associate or Affiliate thereof (or any constituent thereof) have common controlling shareholders or other ownership

interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate or Affiliate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate or Affiliate, as the case may be) in the other Bidder, its Member or Associate or Affiliate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 4.5.3.1(1), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (2) A constituent of such Bidder is also a constituent of another Bidder; or
- (3) Such Bidder, its member or any Associate or Affiliate thereof receives or has received any direct or indirect subsidy, grant, or subordinated debt from any other Bidder, its member or Associate or Affiliate, or has provided any such subsidy, grant, or subordinated debt to any other Bidder, its member, or any Associate or Affiliate thereof; or
- (4) Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (5) Such Bidder, or any Associate or Affiliate thereof, has a relationship with another Bidder, or any Associate or Affiliate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- (6) Such Bidder or any Associate or Affiliate thereof has participated as a consultant to the Authority in the preparation of any documents, design, or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 4.5.3.1, shall include each Member of such Consortium.

For purposes of this RFP, “**Affiliate**” means with respect to a specified Person, any Person which is a holding company or subsidiary of such specified Person, or any Person which directly or indirectly, (a) owns or controls such specified Person, (b) is owned or controlled by such specified Person, or (c) is owned or controlled by the same Person, who, directly or indirectly, owns or controls such specified Person. For the purposes of this RFP Document, the terms "holding company" and "subsidiary"

shall have the meaning ascribed to them under Section 2 of the Companies Act, 2013 and the term "control" shall mean:

- (i) Control over the composition of majority of board of directors of a company; or
- (ii) Control of more than 50% (fifty percent) of the voting shares of such Person

and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

4.5.3.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate or Affiliate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LoA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Preferred Bidder or Concessionaire, as the case may be, after issue of the LoA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Preferred Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project

4.5.3.3 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

4.5.4 **Change in Ownership**

4.5.4.1 By submitting the Bid, the Bidder acknowledges that it qualifies on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members. The shareholding pattern of the consortium members shall be maintained as per the stipulations of RFP document including its addendum. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Clause 4.5.4.1 shall apply only when the Bidder is a Consortium.

4.5.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of change in control of a Consortium Member or an Affiliate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same

and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Preferred Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

- 4.5.4.3 The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there under.

4.5.5 Financial Capability

The Bidder (Sole Bidder or the Consortium together), shall be required to meet the following financial eligibility criteria:

Minimum Net–Worth of the Sole Bidder / the Consortium must be at least one fourth of the estimated project cost i.e. **₹60 Crore (Rupees Sixty Crore)**.

The Net Worth shall be computed as below:

(Subscribed and paid-up Share Capital + Reserves and Surplus) – (Revaluation Reserves + Miscellaneous expenditure not written off + Deferred Revenue Expenditure + Deficit in P & L Account if any)

(For the avoidance of doubt, Net Worth for the purpose of this RFP shall exclude any valuation of land asset holdings)

The single currency for evaluation is Indian Rupee (INR or ₹). The conversion rate of Foreign Currencies shall be the State Bank of India Bill Selling Rate of exchange as on 60 days prior to the Bid Due Date.

The net worth should be certified by the statutory auditor /Chartered Accountant (CA).

(Note - For the avoidance of doubt, Net Worth for the purpose of this RFP shall exclude any valuation of land asset holdings)

4.5.6 Experience Criteria

The Bidder (Sole Bidder or the Consortium together), shall be required to meet the following:

1. Experience eligibility criteria in “**Eligible Project(s)**” of cumulative value not less

than **₹480 Crores (Indian Rupees Four Hundred Eighty Crore only)**, i.e twice the estimated project cost, from:

a. Development and/or construction experience, where:

- i) All the eligible projects shall have been executed within past 10 (Ten) years prior to the date of issuance of this RFP document.
- ii) Development shall mean responsibility for financing/investing in a project, and planning, designing, constructing, commissioning etc. of the Project directly or through a contractor.
- iii) Only such projects are considered eligible where the project cost is not less than **₹48 Crores (Indian Rupees Forty Eight Crore Only)**, i.e. 20% of the estimated project cost.

Here, the “**Eligible Project(s)**” shall mean:

i. At least 50% of criteria for project experience should be met through either:

- a) MICE Projects/ Convention Centers/ Hotels / Resorts projects
- b) Any other Tourism Infrastructure Projects as defined in the Andhra Pradesh Tourism Policy 2020-25

ii. Whereas rest can be met through other and Core Sector projects such as:

- a) Shopping malls, Commercial Complexes, Multiplex, Office / IT Parks, Schools, Colleges, Hospitals, Government Buildings, sports complexes and real estate development (apartment complexes, etc, excluding plotted land development).
- b) Core Sector projects include power, telecom, ports, airports, railways, metro rail, industrial parks/estates, logistic parks, pipelines, irrigation, water supply, sewerage, etc.

And/or

b. Collection and Appropriation of Revenues from operations of “Eligible Project(s)” where:

- i) All the revenues from the eligible projects shall be within past 10 (Ten) years prior to the date of issuance of this RFP document.
- ii) Only such project revenues are considered eligible which are not less than **₹48 Crores (Indian Rupees Forty Eight Crore Only)**, within the past 10 (Ten) years prior to the date of issuance of this RFP document.

Here, the “**Eligible Project(s)**” shall mean:

- a) MICE Projects/ Convention Centers/ Hotels / Resorts projects
- b) Any other Tourism Infrastructure Projects as defined in the Andhra Pradesh Tourism Policy 2020-25

2. As on the Bid Due Date, the Bidder (Sole Bidder / Consortium) shall be either Owning or Operating Hotel(s) in the category of not less than 5 Star (or equivalent) either nationally or internationally, such that the cumulative number of rooms shall not be less than 200 numbers, together in not more than 3 such Hotels.

(for the avoidance of doubt, the Bidder shall be entitled to claim experience as per the definition of “Affiliate” specified in this RFP)

4.5.7 Other Stipulations for Eligibility

- a. In case of Sole Bidder, the Sole Bidder shall have to meet the technical and financial eligibility requirements
- b. In case of consortium, the consortium members shall together satisfy the technical and financial eligibility requirements through any one of the below mentioned models:
 - i. The Lead Member of the Consortium shall qualify the Financial Capability requirement and the other member of Consortium shall qualify the Experience Criteria requirement mentioned in the bid document

(OR)

 - ii. The Lead Member shall qualify (minimum) 50% of the Financial Capability requirement and other member shall qualify (minimum) 25% of the Experience Criteria requirement.

4.5.8 Qualification through Affiliates

The Bidder (in case the Bidder is a Consortium then each of the members of the Consortium) can draw upon the Technical Experience and Financial Capability of one or more of its Affiliates. In either case, the ownership relation between the Bidder and the Affiliate(s) must be explained.

For purposes hereof, “Affiliate” shall mean as defined in clause 4.5.3.1 of this RFP.

4.5.9 Special Conditions for a Consortium

- a. For evaluation of Financial Capability, the following conditions shall additionally apply:
 - i. The maximum number of members in the Consortium shall be two including the Lead Member.
 - ii. The Lead Member shall fulfill a minimum of 50% of the Financial Criteria as mentioned above.
 - iii. The Consortium as a whole shall be required to commit to hold a minimum equity participation of 51% in the Project SPC at all times during a period that shall not be less than five (05) years from the Commercial Operation Date (CoD).
 - iv. Minimum equity commitment shall be as per the Clause 4.5.2.

- b. For evaluation of Experience Criteria as stipulated in Clause 4.5.6, only such projects would be considered for evaluation, which have:
- i. Developed by any one constituent member of the Consortium either on its own or as a lead member of a Consortium/SPC.
 - ii. Where each project cost / revenues collected and appropriated from each project within the past 10 years prior to the date of issuance of this RFP document is not less than **₹48 Crores (Indian Rupees Forty Eight Crore Only)**, i.e., 20% of the estimated project cost.
 - iii. The single currency for evaluation is Indian Rupee (INR or ₹). The conversion rate of Foreign Currencies shall be the State Bank of India Bill Selling Rate of exchange as on 60 days prior to the Bid Due Date.

4.5.10 Special Condition for a Sole Bidder:

In case of Sole Bidder, he shall be required to commit to hold a minimum equity participation of 51% in the Project SPC at all times during a period that shall not be less than five (05) years from the Commercial Operation Date (COD) i.e. the Lock-in-Period.

4.5.11 Non-Compliance with RFP

The Authority reserves the right to terminate Bidder's participation in the bidding process at any time, should the Authority consider that a Bidder has, failed to comply with the procedures and requirements prescribed in the RFP.

4.6 Cost of Bidding

The Bidder shall bear all costs associated with the preparation and submission of its Bid, including site visits, field investigations, data collection, analysis, market assessment, viability analysis, due diligence, etc. and also any discussions/negotiations. The Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

4.7 Site Visit and Verification of Information

- 4.7.1 Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining themselves the site conditions, location, neighborhood developments, catchment analysis, climate, availability of power, water and other utilities for construction, access to site, market assessment, project viability, applicable laws and regulations, applicable bye-laws and CRZ regulations, and any other matter considered relevant by them.
- 4.7.2 It shall be deemed that by submitting a Bid, the Bidder has:
1. Made a complete and careful examination of the Bidding Documents.
 2. Received all relevant information requested from the Authority.
 3. Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 4.7.1 above.

4. Satisfied itself about all matters, things and information including matters referred to in Clause 4.7.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under.
 5. Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 4.7.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire.
 6. Acknowledged that it does not have a Conflict of Interest; and
 7. Agreed to be bound by the undertakings provided by it under and in terms hereof.
- 4.7.3 The Authority shall not be liable for any omission, mistake, or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents, or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

4.8 Verification and Disqualification

- 4.8.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.
- 4.8.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- i. At any time, a material misrepresentation is made or uncovered, or
 - ii. The Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.
- Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified / rejected, then the Authority reserves the right to:
- i. Invite the remaining Bidders to submit their Bids; or
 - ii. Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- 4.8.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into the Concession Agreement, and if the Preferred Bidder has already been issued the Letter of Award (LoA) or has entered into the Concession

Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Preferred Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Preferred Bidder or Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

4.9 Cost of RFP Document

- 4.9.1 RFP Document can be downloaded from www.apecurement.gov.in. The RFP document Fee of **₹1,00,000 (Rupees One Lakh only)** is payable in the form of Demand Draft from any Nationalised/ Scheduled (excluding Co- operative) Bank in favour of **“The Metropolitan Commissioner, VMRDA”**, payable at Visakhapatnam.
- 4.9.2 Any Bid not accompanied by RFP Document Fee as per 4.9.1 shall be summarily rejected by the Authority as non-responsive and their Bids shall not be opened/processed for evaluation. The RFP Document Fee shall be non-refundable.

4.10 Power of Attorney for Bid Signatory

- 4.10.1 Power of Attorney, duly notarised and on a non-judicial ₹100 (Rupees One Hundred only) stamp paper, issued and signed by both the members of the bidding consortium appointing the Lead Member to act on its behalf in such capacity as its representative for the implementation of the Project shall be submitted as per the format provided in Appendix A7 of Section II of this RFP.
- 4.10.2 Power of Attorney duly notarised and on a non-judicial ₹100 (Rupees One Hundred only) stamp paper, issued and signed by the Bidder/Lead Member of the Bidding Consortium in favour of a specified person to act as the official representative of the Bidder/Bidding Consortium for the purpose of signing documents, making corrections/modifications and interacting with the Authority and acting as the contact person shall be submitted as per the format provided in Appendix A8 of Section II of this RFP.

4.11 Validity of Bid

- 4.11.1 The Bids submitted shall remain valid for 180 days from the Due Date of submission.
- 4.11.2 In exceptional circumstances, prior to the expiry of the original Bid validity period, the Authority may request the Bidders to extend the period of validity for a specified additional period. The request for the extension shall be made in writing. Bidder will not be permitted to modify their Financial / Price Bid, but will be required to extend the validity of the Bid Security for the period of extension, and in compliance with Clause 4.12 hereof.

4.12 Bid Security to be Submitted by Bidders

- 4.12.1 The Bidder shall furnish, along with the Bid, a Bid Security of **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only)**, either in the form of a Demand Draft / Pay

Order drawn in favor of “**The Metropolitan Commissioner, VMRDA**” and payable at Visakhapatnam, Andhra Pradesh or an unconditional and irrevocable Bank Guarantee from a Nationalised / Scheduled Bank (excluding Cooperative Banks), en-cashable at Visakhapatnam, Andhra Pradesh, in the format provided in this RFP. The Bid Security shall be refundable, interest free, as per the terms and conditions spelt out in this RFP.

- 4.12.2 Any Bid not accompanied by a Bid Security in the manner stated above shall be rejected by the Authority as non-responsiveness and their Bids shall not be opened for evaluation.
- 4.12.3 In case of Bank Guarantee, the Bank Guarantee towards Bid Security shall be valid for 240 days from the Due Date of submission, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India having its branch at Visakhapatnam, Andhra Pradesh is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 4.12.4 The Bid Security of unsuccessful Bidders, except the Bidder (H2) next to the Preferred Bidder (H1), will be returned promptly by the Authority without any interest, but not later than one month after the expiration of the Bid Validity Period, or within 15 days of issue of Letter of Award (LoA) to the Preferred Bidder, whichever is earlier. The Bid Security of H2 will be returned within 15 days of signing of Concession Agreement with the Preferred Bidder.
- 4.12.5 The Bid Security of H1 shall be retained till it has provided a Performance Security in terms hereof and signed the Concession Agreement.
- 4.12.6 The Bid Security of H1 & H2 shall be extended beyond the original validity period in case the signing of Concession Agreement is delayed due to any reason.
- 4.12.7 The Authority shall be entitled to forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation/ damages to the Authority in any of the events specified in Clause 4.12.8 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 4.12.8 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
 - a. If a Bidder submits a non-responsive Bid;
 - b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 9 of this RFP;
 - c. If the Bidder withdraws his Bid during the period of Bid Validity (includes Bid processing time) as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority or modifies his Bid within the validity period;
 - d. If the Bidder refuses to accept the correction of errors in his Bid; or
 - e. If the Bidder submits a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by the Authority; or

- f. In the case of Preferred Bidder, if it fails within the specified time limit to fulfill any of the following conditions:
- g. To sign and return the duplicate copy of LOA;
- h. To furnish the Performance Security within the period prescribed thereof and herein;
- i. To pay the Project Development Fee in accordance with the provisions hereof;
- j. To pay the advance Annual Lease Rental in accordance with the provisions hereof;
- k. To pay the Corpus Fund amount
- l. To sign the Concession Agreement
- m. To fulfill any or all of the Conditions set forth in the Letter of Award

4.13 Miscellaneous Instructions

- 4.13.1 The Authority reserves the right to disqualify Bidders at any stage of the bidding process if the details submitted for pre-qualification are found to be incorrect or untrue.
- 4.13.2 Bids that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP might be considered non-responsive and may be liable for rejection.
- 4.13.3 Adherence to formats, wherever prescribed, is required. Non-adherence to formats might be a ground for declaring a Bid non-responsive.
- 4.13.4 All communication and information shall be provided in writing and in English language only.
- 4.13.5 All financial data shall be given (converted) in Indian Rupees only. The conversion ratio has to be specified clearly.
- 4.13.6 All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of conflict between amounts stated in figures and words, the amount stated in words will be taken as correct.
- 4.13.7 No change in, or supplementary information to a Bid shall be accepted once submitted. However, the Authority or any of its advisors/ agencies/ consultants reserves the right to seek additional information and/ or clarifications from the Bidders, if found necessary, during the course of evaluation of the Bid. Non-submission, incomplete submission, or delayed submission of such additional information and/ or clarifications sought by the Authority or any of its agencies/consultants, may be a ground for rejecting the Bid.
- 4.13.8 If any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by the Authority or any of its agencies /consultants /advisors, is found to be incorrect or is a material misrepresentation of facts, then the Bid shall be liable for rejection. Mere clerical errors or bonafide mistakes may be treated as an exception at the sole discretion of the Authority or any of its advisors/ agencies/consultants and if the Authority or any of its advisors/ agencies/ consultants is adequately satisfied.

4.14 Bid Responsiveness

- 4.14.1 A Bid shall be deemed “**non-responsive**” if it does not satisfy any of the following conditions:
- i. It is not received by the Due Date and time
 - ii. If the bid is not submitted online or if the Technical Bid is not submitted in physical form
 - iii. If the online Bid does not include any of the submissions listed in clause 6.1.2.
 - iv. It does not include sufficient information/ details for it to be evaluated and/or is not in the formats specified in this RFP.
 - v. It is not signed and/or sealed in the manner as specified in this RFP.
 - vi. Bid Security for specified amount does not accompany it.
 - vii. If it is not accompanied by Demand Draft / Pay Order for RFP Document fee of **₹1,00,000 (Rupees One Lakh only)**.
- 4.14.2 Non-responsive Bids shall be liable for rejection at any stage during the Bid evaluation process and the decision of the Authority in this regard is final and binding.

4.15 Clarification & Amendment of RFP Documents

- 4.15.1 Bidder requiring any clarification on the RFP document shall request the Authority office in writing or by e-mail (any reference to either E-mail shall be interpreted to include the other) at the address given below:
- To
The Metropolitan Commissioner
Visakhapatnam Metropolitan Regional Development Authority.
7th Floor, Engineering Wing
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003.
Ph: 7702333584 – Chief Engineer,
Email: mcvmrda@gmail.com
- 4.15.2 The Authority will respond to any request for clarification, which is received in writing two (2) working days before the Pre-Bid Meeting by hosting the response to pre-bid queries only on the aprocurement portal www.apecurement.com, including a description of the query, but without identifying its source. Further, the Authority reserves the right at its discretion to respond to any additional queries, if any.
- 4.15.3 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 4.15.4 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders or any addendum to the Bidding Documents. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

- 4.15.5 The Bidders shall note that reliance upon information/ clarification that is provided by any other source shall be at the risk of the Bidders.
- 4.15.6 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda to all the Bidders.
- 4.15.7 Any addendum thus issued shall be part of the RFP document and these addenda will be posted only on www.apecurement.com and in the tenders section of VMRDA website for additional reference to Bidders. However, the addendum hosted only on www.apecurement.com shall be considered as final by Bidders.
- 4.15.8 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

5 BIDDING PROCESS

- 5.1.1 The Bidders are required to submit their Bids in two parts (i) Technical Bid in Envelope I, and (ii) Financial Bid, through the eprocurement portal www.apecprocurement.com. Further, a physical form of the Technical Bid only along with the prescribed Other Documents shall be required to be submitted before the specified due date and time.
- 5.1.2 The Technical Bids of the Bidders submitted online only will be evaluated for assessing the Bidder's Financial and Experience Capabilities vis-à-vis the stipulated Eligibility Criteria & Submission of Project Undertakings as first stage of Bid evaluation, subject to the fulfilment of other requirements such as submission of Bid Security, DD/Pay Order for RFP Document in Original in the physical form of the Technical Bid, etc.
- 5.1.3 The Bidders qualified/passed the first stage of evaluation i.e. Technical Bid Stage will only be eligible for opening & evaluation of their Financial Bid. Evaluation of the Financial Bids will be the final stage of evaluation process.
- 5.1.4 In order to accomplish a comprehensive, expeditious and fair Bid evaluation process, Bidders are requested to study the contents of the RFP documents completely and carefully. The Bidders may obtain clarifications, if required from the Authority in this regard.
- 5.1.5 The evaluation of Bids would lead to the selection of Preferred / Selected Bidder. The Preferred / Selected Bidder would be required to incorporate a Special Purpose Company (SPC) under the Companies Act, 2013 following which the Concession Agreement would be signed between the Authority and the Project SPC along with the Preferred Bidder as a Confirming Party, upon fulfillment of the LOA conditions by the Preferred / Selected Bidder.
- 5.1.6 Generally, the Preferred / Selected Bidder/s shall be the highest (H1) Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in this RFP, the second highest bidder (H2) be invited to match the Bid submitted by the highest (H1) Bidder in case such highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the Authority may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.

6 PREPARATION AND SUBMISSION OF BIDS

6.1 General Submissions

6.1.1 The Bid shall be submitted in two separate parts as under:

- a. **Part I: Technical Bid**
- b. **Part II: Financial Bid**

6.1.2 The following shall be submitted in the Outer Documents of the Bid, in online mode as well as in physical form (Original):

- a. Covering Letter/Application as per Appendix A1 of Section II, of this RFP;
- b. Checklist of submissions as per Appendix A2 of Section II, of this RFP;
- c. Covering Letter & Bank Guarantee / DD / Pay Order towards Bid Security for **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only)** as per Appendix A3 Section II, of this RFP;
- d. Letter of Undertaking that the Bidder is not barred by Government of Andhra Pradesh/any State Government/ Government agency or the Central Government of India from participating in such projects as per Appendix A4 Section II, of this RFP;
- e. An undertaking to submit Performance Security (Bank Guarantee), interest free Advance Lease Rentals, Project Development Fee before signing of Concession Agreement as per Appendix A5 of Section II of this RFP;
- f. In case of Bidder being a Consortium, Consortium Agreement duly signed by all members of the Consortium as per Appendix A6 of Section II, of this RFP;
- g. In case the Bidder is a Consortium, Power of Attorney and nominating one member as Lead Member of the Consortium as per Appendix A7 of Section II, of this RFP;
- h. Power of Attorney for the Bid Signatory as per Appendix A8 of Section II, of this RFP;
- i. Statement of Legal Capacity Signatory as per Appendix A9 of Section II, of this RFP;
- j. DD/Pay Order of ₹1,00,000 towards RFP Document Fee;
- k. The signed copy of RFP, Response to pre-bid queries and the addenda / Corrigenda, if any, along with other submissions as a token of acceptance of the terms and conditions therein.

Preparation and Submission of Online Bids

- i Bids have to be submitted ONLINE in two parts in the prescribed proforma i.e., Part I - Technical Bid and Part II - Financial Bid.
- ii Registration with aprocurement platform: For registration and online Bid submission, Bidders may visit <https://tender.apecurement.gov.in>. The Bidders shall authenticate the Bid with his/her Digital Certificate for submitting the Bid electronically on e-procurement platform and the Bids not authenticated by Digital Certificate of the Bidder will not be accepted on the e-procurement platform.
- iii The Bidder is requested to download this Tender Document from the website at

<https://tender.apecurement.gov.in> and read all the terms and conditions mentioned in this Tender Document.

- iv The Bidder has to keep track of any changes by viewing the clarifications / addendum / corrigendum, if any, issued by the Authority from time-to-time in the e-procurement platform. The Authority calling for tenders shall not be responsible for any claims/issues arising out of this.
- v The Bidder shall submit its online bid on e-procurement platform at <https://tender.apecurement.gov.in>.
- vi The Bidder shall submit their eligibility and qualification documents, Technical Bid, Financial Bid etc., in the standard formats prescribed in this Tender Document, scanned and to be submitted through the e-procurement portal. The Bidder shall upload the scanned copies of all the relevant certificates, documents, etc., in support of their eligibility criteria/Technical Bids and payments proof, Bid Security, etc. in the e-procurement portal. The Bidder or its authorized representative shall sign on the statements, documents, certificates, uploaded by him/her, owning responsibility for their correctness/ authenticity.

Note: - All the required documents are to be arranged in the serial order, (serial numbers and page numbers should be indicated on the right-side top of the corner) and to be uploaded to the e-procurement portal i.e., <https://tender.apecurement.gov.in>.

- vii The Bidder should complete all the processes and steps required for Bid submission. The successful Bid submission can be ascertained once acknowledgement is given by the system through Bid submission number after completing all the process and steps. GoAP and the Authority inviting tender shall not be responsible for incomplete Bid submission by the Bidders. The Bidder may also note that the incomplete Bids will not be saved by the system and are not available for the Authority for further processing.

6.1.3 All the above submissions shall be submitted in online mode (scanned copies) and in addition, all original submissions shall be placed inside the Outer Envelope along with Original of the Technical Bid in a sealed envelope. The Outer Envelope shall be sealed, labelled as **“BID FOR DEVELOPMENT OF CONVENTION CENTRE & 5 STAR CATEGORY HOTEL / RESORT WITH OTHER WATERFRONT ENTERTAINMENT FACILITIES ON PRIME LAND ALONG BEACH ROAD AT VISAKHAPATNAM, ANDHRA PRADESH, INDIA ON PPP BASIS – TECHNICAL BID”** and **NOT TO BE OPENED BEFORE THE DUE DATE/TIME FOR BID SUBMISSION & OPENING**. In addition, the Bid Due Date should be indicated on the right-hand top corner of each of the envelopes.

6.1.4 The envelopes shall be addressed to:

To,
The Metropolitan Commissioner,
Visakhapatnam Metropolitan Regional Development Authority,
7th Floor, Engineering Wing, Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003.

6.2 Instructions For Submission of Technical Bid

Technical Bid comprises of Eligibility / Capability Statements and Project Undertaking.

Capability Statement

In addition to the online submission, Bidders are required to submit Capability Statement in online mode as well as in **Envelope I** of the physical Bid submission.

6.2.1 General Information of the Bidder

- a) Details of the place of incorporation, registered office (or its equivalent), current directors, key management personnel and principal shareholders, legal jurisdiction, principal country where assets are located, and, where the Bidder is a subsidiary company, the details of the Bidder's status as a subsidiary together with the name, registered office (or its equivalent), current directors and principal shareholder of its immediate and all superior holding companies.
- b) In case of Bidder being a Consortium, the above information should be given for all the members of the Consortium including the role of each member of the Consortium in implementation of the Project.
- c) Contact Details comprising name, address, telephone and facsimile numbers, E-mail address of the Bidder (Lead Member and each member in case of Consortium) and the names and titles of the persons who are the principal contact persons shall be provided. This information is to be provided as per **Appendix B1** of Section II, of this RFP.

6.2.2 Financial Qualifications (to meet the Eligibility Criteria)

- a) The Bidders shall submit their Financial Qualifications / Data as per Appendix B2 of Section II,
- b) The Bidders shall be required to submit Audited Annual Accounts of Single Entity or all the Consortium Members for past three financial years in support to the above, as attachments to the Appendix B2, Section II, of this RFP.

6.2.3 Experience Qualifications (to meet the Eligibility Criteria)

- a) Development or Construction Experience: Details shall be furnished separately for each member of Consortium as per Appendix B3 of Section II, of this RFP.

6.2.4 Project Undertaking for Technical Bid

The Bidders shall be required to submit their Project Undertaking in Envelope I as per Appendix B5.

Apart from the submission of scanned documents in the online bid, the Bidders shall prepare and submit one (1) **original** of Technical Bid in Envelope I duly marking

“**ORIGINAL**”. This envelope shall be sealed, labelled as “**ENVELOPE I: TECHNICAL BID FOR DEVELOPMENT OF CONVENTION CENTRE & 5 STAR CATEGORY HOTEL / RESORT WITH OTHER WATERFRONT ENTERTAINMENT FACILITIES ON PRIME LAND ALONG BEACH ROAD AT VISAKHAPATNAM, ANDHRA PRADESH, INDIA ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS**”, and placed inside the Outer Envelope. In case of any difference of data/information submitted in the Original and online, the information provided in the online mode shall be treated as final.

6.3 Instructions for Submission of Financial Bid / Price Bid.

6.3.1 The Bidders shall be required to submit their Financial / Price Bids as under:

- a) Price Bid / Financial Bid in the following manner
 - (i) In the Price Bid/ Financial Bid formats (Section II of this RFP) Bidders are required to dully fill in their quotes for the “%” “**Percentage Share of Gross Revenues**” and “**Minimum Assured Amount**” of “**ADDITIONAL DEVELOPMENT PREMIUM**” payable to the Authority in each year, by strictly adhering to the minimum prescribed values specified in the format. The format shall be duly filled, Printed on Letter Head of the Bidder / Lead Member of the Consortium, signed, stamped, scanned and submitted in the Financial Bid / Price Bid module of the aprocurement portal.
 - (ii) Quote the computed Net Present Value (NPV) of the quoted Minimum Annual Assured Amounts at a discount rate of 10%, in the Bid Value window of the Financial Bid / Price Bid module of the aprocurement portal. The NPV shall be as calculated in MS Excel, by applying the formula:**NPV(10%, [Min. Assured ADP Construction Period Year 1]: [Min. Assured ADP Year 33])**
- b) Bidders shall submit the Price Bid / Financial Bid in the online mode, through the aprocurement portal only.
- c) The ADP quoted in the aprocurement shall be deemed to be excluding applicable GST, that shall be payable extra by the Selected Bidder.
- d) Submission of Financial Bid in the physical format shall lead to rejection of the Bid
- e) The decision of the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by the Bidder in each year, as scanned and submitted in the Financial Bid / Price Bid. Accordingly, VMRDA reserves the right to edit and correct the Auto-populated results for the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.
- f) A Bidder, by submission of its Price Bid / Financial Bid in the aprocurement portal, is deemed to have undertaken to accept the conditions spelt out in this clause 6.3.1 and also in the Price Bid / Financial Bid format in Section II of this RFP.

6.4 Common Instructions

- 6.4.1 All the inner envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared “late” or “non- responsive” or “non-qualified” as the case may be.
- 6.4.2 If the outer envelope is not sealed and not marked as per Clause 6.1.3 & 6.1.4, the Authority will not assume any responsibility for the misplacement or premature opening of the bid. If the Outer Envelope discloses the Bidder’s identity, the Authority will not guarantee the anonymity of the bid submission, but this shall not constitute grounds for rejection of the Bid.
- 6.4.3 The Bid must be received by the Authority not later than the date specified in the Bid Summary and “Schedule of Bidding Process” at the address mentioned in the RFP.
- 6.4.4 Bids submitted by fax or email or in physical mode only, shall not be entertained and shall be rejected.

6.5 Signing of BID

The authorized signatory shall sign or initial each page of the Bid documents along with the stamp of the Bidder (Sole Bidder/Lead Member in case of a Consortium) and submit the same. They must also sign and stamp each page of the RFP (including the draft Concession Agreement) issued and submit the same along with the Bid to the Authority.

6.6 Bid Due Date

- 6.6.1 Bids should be submitted before the Due Time and Due Date at the address provided in Clause 6.1.4 in the manner and form as detailed in this RFP.
- 6.6.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 4.15.6 uniformly for all Bidders.

6.7 Late Bids

The Physical Bid received after the Due date & time will not be considered and will be returned unopened to the Bidder. The online bid of such bidders shall not be opened and summarily rejected. There will be no exceptions to this requirement. It is the Bidder’s responsibility to ensure that the bids are received at the Authority’s office within the Due Date and time.

6.8 Modifications / Substitution / Withdrawal of Bids

- 6.8.1 The Bidders may modify or withdraw their Bids after submission, but prior to the Due Date. The responsibility of submitting the modified Bid, on or before the Due Date will rest solely with the Bidders.

- 6.8.2 For the physical submission, the modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate. The Bidders cannot modify their Bids after the Due Date & Time. The Bids shall only be modified, if the same is requested by the Authority only to accommodate clarifications on the Bids submitted.
- 6.8.3 In the event of withdrawal of a Bid by the Bidder after the Due Date but within the Bid validity period, the Bid Security of the Bidder shall become liable for forfeiture.

6.9 Rejection of Bids

- 6.9.1 The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder or may take such other steps as it may deem fit in its sole discretion as per applicable laws without being liable for the same in any manner.
- 6.9.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

7 BID OPENING AND EVALUATION

7.1 Opening of Bids

- 7.1.1 The online bids (Technical) and the Outer Envelope of Physical copy of the Technical Bids will be opened in the presence of the Bidder's designated representatives who choose to attend, at the time, date and location given below:

Location: Visakhapatnam Metropolitan Regional Development Authority
7th Floor, Engineering Wing, Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003.

Date: th 2023

Time: 03:00 P.M. or any other date intimated from time to time.

- 7.1.2 The Technical Bids of the Bids of the Bidders who have satisfactorily submitted the online bids as well as physical mode shall only be opened.
- 7.1.3 The Price Bids of the Bidders who qualify in the evaluation of Technical Bids only would be opened. The Price Bids shall be opened in the presence of the representatives of the technically Qualified Bidders, who choose to attend. Technically Qualified Bidders will be informed regarding, venue, date and time of the Price Bids opening, separately.

7.2 Process To Be Confidential

- 7.2.1 The documents including this RFP and all attached documents relating to the examination, clarification, evaluation, comparison of Bids and recommendations for the award of a contract, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 7.2.1 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid document, or any information provided along therewith.

7.3 Clarification of Bids

- 7.3.1 To assist in the examination, evaluation, and comparison of Bids, the Authority may, at its discretion, ask any Bidder for information/ clarification/ substantiation.
- 7.3.2 In addition, the Authority may utilize services of any other consultants/ advisors/ experts to assist in the examination, evaluation and comparison of Bids.
- 7.3.3 However, clarifications if any required from Bidder, shall be in written form and will be communicated to the Bidder by the Authority.

7.4 Evaluation of Bids:

7.4.1 Evaluation of Technical Bid:

- a. Process: The Authority may at its discretion, constitute a Bid Evaluation Committee for the purpose of Bid Evaluation. For evaluation purpose, only documents submitted in the online mode shall be considered, subject to clarifications / supporting / substantiating documents that the VMRDA may choose to seek, at its exclusive discretion. The submissions of the Technical Bid would be evaluated to check its' substantial compliance with the stipulated requirements. If the submission is not in substantial compliance, the submission will be rejected and the Bidder will be eliminated from further evaluation process. The right to determine the 'substantial compliance' or otherwise will rest solely with the Authority/ Committee and no correspondence and/or representation towards this will be entertained. A Technical Bid that is in substantial compliance is one that is accompanied by the required documents in the prescribed format that conforms to the requirements without material deviation or reservation (i.e. which affects in any substantial way the scope, obligations, quality, specifications, standards, rules, controls and performance of the Project) and is submitted as per the requirements stipulated under this RFP.
- b. Cause for Rejection: The required information shall be provided in "reasonable detail" and in the prescribed formats. For purposes here, 'reasonable detail' means that, the submissions in the Technical Bid generally meet the requirements and if need be, by having communication with the Bidder, the same can be clarified. The determination of whether the information has been provided in 'reasonable detail' rests solely with the Authority/ Committee.
- c. The Authority/ Committee may discuss, request clarifications/ substantiation /additional information and require meeting with the Bidders or presentation by the Bidders their Technical Bids. The Bidder shall provide clarifications/ substantiation/additional information, as requested within the period specified by the Authority.
- d. The evaluation steps of the Technical Bid are summarized as below:

S.No	Eligibility Criteria	Qualified
1	General Eligibility Criteria	Yes/No
a.	Test for Responsiveness	Yes/No
b.	Check for Online Submissions as per RFP	Yes/No
2.	Test for Technical Criteria	Yes/No
a.	Financial Criteria	Yes/No
b.	Experience Criteria	Yes/No

- e. If answer to any one of the above items is 'No', the Bid shall be non- qualifying and hence would not be taken up for further evaluation of the Project Undertaking and opening of Price Bid. If answer to all of the items is 'Yes', then the Project

Undertaking of the Bidder will be evaluated.

f. Project Undertaking

- i The submissions of the Project Undertaking would be evaluated by the Authority/Bid Evaluation Committee to check its substantial compliance with the stipulated requirements. If the submission is not in substantial compliance, the submission will be rejected and the Bidder will be eliminated from further evaluation process. The right to determine the ‘substantial compliance’ or otherwise will rest solely with the Authority and no correspondence and/or representation towards this will be entertained. A Project Undertaking that is in substantial compliance is one that is accompanied by the required documents that conforms to the requirements without material deviation or reservation (i.e., which affects in any substantial way the scope, obligations, quality, specifications, standards, rules, controls and performance of the Project).
- ii Requirements for Substantial Compliance: Project Undertaking submitted as per the Format indicated in the Section II of the RFP, that agrees to the technical requirements mentioned in the RFP shall be considered as substantially compliant.
- iii The right to determine the ‘substantially compliant’ Bid or otherwise shall rest solely with the Authority and no correspondence and/or representation towards the same shall be entertained.
- iv The evaluation of the Project Undertaking is summarized as below:

Criterion Compliance	Compliance
Project Undertaking Requirements	Yes / No

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

7.4.2 Evaluation of Price Bid / Financial Bid

- a. If the submission is in substantial compliance with the Price Bid / Financial Bid, then, Bid Evaluation Committee will review and evaluate the Price Bid / Financial Bid. If the submission does not satisfy the criteria, the submission will be rejected and the Bidder will be eliminated from further evaluation process.
- b. Requirements for Substantial Compliance: Prior to the detailed evaluation of the Price Bid, Bid Evaluation Committee will determine whether each Bid or Bidder is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
 - a. If the Bidder has submitted the scanned copy of the Price Bid / Financial Bid format (Section II of this RFP), by duly filling in their quotes for the “%” **“Percentage Share of Gross Revenues”** and **“Minimum Assured Amount”** of **“ADDITIONAL DEVELOPMENT PREMIUM”** payable to the Authority in each year, by strictly adhering to the minimum prescribed values specified in the format. The format shall be duly filled, Printed on Letter Head of the Bidder / Lead Member of the Consortium, signed, stamped,

scanned and submitted in the Financial Bid / Price Bid module of the aprocurement portal.

- b. If the Bidder has quoted the computed Net Present Value (NPV)
- c. It is received as per the aprocurement portal requirements
- d. It does not contain any condition or qualification; and
- e. It is not non-responsive in terms hereof.
- f. It is presented in a manner that conforms with the requirements of the RFP;

The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

7.5 SELECTION OF BIDDER

- 7.5.1 Subject to the provisions of Clause 6.9.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 7.4.2 and who's "**ADDITIONAL DEVELOPMENT PREMIUM**" quoted is adjudged to be the highest in terms hereof, shall be declared as the Preferred Bidder (the "**Preferred Bidder**" or the "**Selected Bidder**").

For the avoidance of doubts, the following is hereby clarified that,

- a. A Bidder shall be required to quote its Bid in Price Bid / Financial Bid (strictly in the format provided for the Price Bid) in the aprocurement portal only, the Additional Development Premium (ADP) that it will pay to the Authority, each year, commencing from year 4 from the date of signing of the Concession Agreement (the **BID PARAMETER**), for grant of the development rights for the Project to the Concessionaire.
- b. The ADP shall be quoted in terms of "%" ("**Percentage**") of "**Annual Gross Revenue**" as well as in terms of "**Minimum Annual Assured Amount**", for each year of the Concession Period, commencing from year 4 from the date of signing of the Concession Agreement up to the end of the Concession Period. (amount quoted shall be excluding applicable GST, that shall be payable by the Bidder over and above the quoted Bid Parameter).
- c. The reserve value or the minimum ADP shall be not less than 5% in percentage terms. and the Minimum Annual Assured Amount shall be as per the Bidder's projections corresponding to the quoted % share of Annual Gross Revenue. Further, the Minimum Annual Assured Amount shall be incremented atleast by an amount not less than 5% of the Minimum Annual Assured Amount, in a block of every 3 (three) years. Similarly, the ADP % shall not be less than that quoted for the previous year.
- d. Bids submitted with ADP lower than the minimum specified ADP shall be summarily rejected
- e. For the purpose of evaluation of Price Bids and for determining the "Highest Bidder", NPV of the quoted Minimum Annual Assured Amounts at a discount rate of 10% shall be computed.
- f. In actual practice, in any given year, the Additional Development Premium (ADP) payable to the Authority shall be the quoted % of the annual Gross Revenues of the Project or the corresponding Minimum Annual Assured Amount, whichever is Higher.

Applicable taxes, GST shall be payable extra.

Further,

- a. The ADP shall commence from the 1st year of operations, i.e. commencement of / 4th year from the date of signing of Concession Agreement, whichever is earlier, and shall be up to the entire Concession Period. Applicable taxes, including the GST on the above shall also be paid by the Concessionaire. In case of any delay in commencement of operations of the Project, the minimum assured amount of ADP shall be due for payment.
- b. The ADP shall be payable in advance on a quarterly basis.

Bidders would be ranked in the descending order of the highest “ADDITONAL DEVELOPMENT PREMIUM” quoted by the Bidders, as set out in the Table below:

Name of Bidder	Bid	Rank
H1	Highest NPV (@discount rate of 10%) of Minimum Annual Assured Amounts of “ADDITONAL DEVELOPMENT PREMIUM” for the Operations Period	1
H2	Second Highest NPV (@discount rate of 10%) of Minimum Annual Assured Amounts of “ADDITONAL DEVELOPMENT PREMIUM” for the Operations Period	2

The decision of the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by the Bidder in each year, as scanned and submitted in the Financial Bid / Price Bid. Accordingly, VMRDA reserves the right to edit and correct the Auto-populated results for the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.

In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 7.5.2 In the event that the NPV (@discount rate of 10%) of Minimum Annual Assured Amounts of “ADDITONAL DEVELOPMENT PREMIUM” of two or more Bidders is found to be the same amount (the "Tie Bidders"), the Authority shall identify the Preferred Bidder by:
- a. Asking the tied Bidders to provide their best and final offer in sealed covers which shall be opened on a specified date. (Such offers shall be not less than the Minimum Annual Assured Amount quoted by the Bidder in each year in the previous instance).
 - b. The Bidder offering the Highest final offer shall be adjudged the winner. (adjudged as highest NPV of the quoted Minimum Annual Assured Amounts at a discount rate of 10%).
 - c. If the tie persists, the successful bidder shall be selected by draw of lots, which shall be conducted, with prior notice, in the presence of the Tied Bidders who choose to

attend.

- 7.5.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the "**second round of bidding**"). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Preferred Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Preferred Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Preferred Bidder.
- 7.5.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 7.5.3, the Authority may, in its discretion, invite fresh Price Bids (the "**third round of bidding**") from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 7.5.5 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Preferred Bidder and the Preferred Bidder shall, within 2 (two) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Preferred Bidder is not received by the stipulated date, the Authority will, unless it consents to extension of time for submission thereof, revoke / withdraw the LOA and appropriate the Bid Security of such Bidder as Damages on account of failure of the Preferred Bidder to acknowledge the LOA with any advance intimation thereof, and the next eligible Bidders may be considered.
- 7.5.6 After acknowledgement of the LOA as aforesaid by the Preferred Bidder, it shall cause the Concessionaire to execute the Concession Agreement and the Lease Agreement within the period prescribed in Clause 8.5. The Preferred Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement or the Lease Agreement.

7.6 Correction of Errors

Bid determined to be substantially responsive will be checked by Bid Evaluation Committee for any arithmetic errors. Wherever there is discrepancy between the amounts in figures and in words, the amount in words shall govern; and

- a. The minimum Assured Annual ADP values quoted shall be strictly adhering to the minimum prescribed values specified in the format. In case of any discrepancies

noted, VMRDA reserves the sole right to either correct the errors on its own, as per the Minimum Values specified in the formats. Such corrections, if any, made by VMRDA, shall be accepted by the Bidder, failing which the Bid shall be rejected and the EMD of the Bidder shall be forfeited in such case

- b. The decision of the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by the Bidder in each year, as scanned and submitted in the Financial Bid / Price Bid. Accordingly, VMRDA reserves the right to edit and correct the Auto-populated results for the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.
- c. The corrections made by Bid Evaluation Committee, as explained above, shall be considered as binding upon the Bidder.
- d. If the Bidder does not accept the corrections in the Bid, Bid Evaluation Committee may reject the Bid and Bid Security may be forfeited.
- e. Any ambiguities in the Financial Bid quote, the interpretation of the Authority is final and binding.

7.7 Contacts During Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

7.8 Confidentiality

The confidentiality of the Technical Bid of each Bidder will be respected by the Authority and will not be divulged unless required by operation of law. The contents of the Technical Bids and any other non-proprietary information of the Preferred Bidder may be made public at the sole discretion of the Authority.

8 AWARD OF PROJECT / SIGNING OF CONCESSION AGREEMENT

8.1 Authority's Right to Reject any or All Bids

The Authority reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to the award of Concession, without thereby incurring any liability to the affected Bidder or Bidders and /or any obligation to inform the affected Bidder or Bidders of the grounds for its action.

8.2 Issuance of LOA after evaluation of the Bids and approval of the authority

Upon completion of the Bid evaluation process, acceptance of the Bid and intention of award of the Project/ Concession would be conveyed by the Authority to the Preferred Bidder, who satisfies all other compliance requirements including payment of the Corpus Fund. The Letter of Award (LOA) would be issued by the Authority to the Preferred Bidder awarding the Project subject to the fulfilment of the preconditions in terms of the RFP and as more particularly to be set forth in the LOA.

8.3 Fulfilment of LOA Conditions

8.3.1 The Preferred / Selected Bidder shall be required to pay within 30 Days of date of issuance of LoA and prior to entering into the Concession Agreement and Lease Deed with the Authority, the non-refundable **Project Development Fee of ₹4,80,00,000 (Indian Rupees Four Crore Eighty Lakhs only) plus GST at 18%**, that shall be payable in the following two parts:

- (i) **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%, if applicable**, drawn in favor of **“The Metropolitan Commissioner, VMRDA”** in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable at Visakhapatnam.
- (ii) **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%**, drawn in favor of **“Andhra Pradesh Urban Infrastructure Asset Management Limited”** in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable of Vijayawada

Payment of Project Development Fees is a precondition for further processing / signing of Concession Agreement. Non-payment of Project Development Fee shall lead to non-compliance to LoA terms, forfeiture of Bid Security and rejection of bid.

8.3.2 The Preferred / Selected Bidder shall be required to make payment of an interest free three months Advance Lease Rental to the Authority towards the Advance Lease Rental for the first quarter, within 30 Days of date of issuance of LOA and prior to entering into the Concession Agreement and Lease Deed with the Authority. The payment shall be in the form any Nationalised / Scheduled Banks (except co-operative Banks), in favour of **“The Metropolitan Commissioner, VMRDA”**, and payable at Visakhapatnam.

- 8.3.3 The Preferred / Selected Bidder shall be required to submit the Construction Period Performance Security in the form of a unconditional and irrevocable Bank Guarantee for an amount of 2.5% of the estimated project cost i.e. **₹6,00,00,000 (Indian Rupees Six Crores Only)** to the Authority as per the format prescribed as part of the RFP / Concession Agreement. The Performance Guarantee will be released to the Concessionaire once the Project Completion is achieved as per the MDOs and commercial operations is commenced. The validity of Performance Guarantee shall be 4 years. Such Performance Bank Guarantee shall be drawn from any Nationalized or Scheduled Bank (except co-operative banks) and shall be encashable at Visakhapatnam. The submission of Performance Guarantee shall be a pre-condition in the LoA, which shall be required to be fulfilled within 30 days of issuance of LoA
- 8.3.4 The Preferred / Selected Bidder shall be required to incorporate a Special Purpose Company (SPC) under the Companies Act, 2013, for the purposes of exclusive implementation of the Project. The Shareholding of such SPC shall be as per the terms of the RFP / Concession Agreement and the Consortium Agreement.

8.4 Submission of Performance Security

- 8.4.1 The Preferred Bidder shall be required to submit an unconditional and irrevocable Bank Guarantee for a sum of **₹6,00,00,000 (Indian Rupees Six Crores Only)** (2.5% of the estimated project cost) towards construction period Performance Security to the Authority within 30 days of issuance of the Letter of Award and before the signing of Concession and Lease Agreement in the format prescribed as part of this RFP / Concession Agreement. Such Performance Bank Guarantee shall be drawn from any Nationalized or Scheduled Bank (except co-operative banks) and shall be encashable at Visakhapatnam.
- 8.4.2 The Performance Security shall be valid for a period of four years. However, the Performance Security may be released on the fulfilment of the Minimum Development Obligations by the Concessionaire and commencement of commercial operations as per the terms of the Concession Agreement.

8.5 Signing of Concession Agreement

- 8.5.1 Within 30 (thirty) days of the issuance of the LoA, the Preferred Bidder shall be required to incorporate a Special Purpose Company (“Project SPC”) i.e. the Concessionaire under the Companies Act 2013 exclusively to implement the Project. The Concessionaire is required to sign the Concession Agreement and Lease Deed with the Authority upon complying with all conditions of the LOA, within 30 days from the date of the LoA. Fulfilment of LOA conditions stipulated in clause 8.3 including submission of Performance Guarantee as per clause 8.4 shall be a precondition for signing of the Concession Agreement and Lease Deed.
- 8.5.2 If the Preferred Bidder fails to sign the Concession Agreement with the Authority within the stipulated time, unless extended by the Authority on submission of a valid request by

the Preferred / Selected Bidder, the Bid Security and all other payments made till that date shall be forfeited. For the avoidance of doubt, providing any extension of time shall be at the sole discretion of the Authority and shall not be the right of the Preferred / Selected Bidder.

- 8.5.3 The Authority shall release the Bid Security to the Preferred Bidder only upon signing of the Concession Agreement by and between the Authority and the Project SPC and the receipt of the Performance Security.

8.6 Execution of Lease Deed & Possession of Site to Concessionaire

- 8.6.1 The Concessionaire upon signing of the Agreement & Lease Deed, and upon formal intimation to the Authority, can fix a date mutually agreeable to both parties, for the Concessionaire to take over the possession of the leased Project Site from the Authority with inventory and records of material / assets in the premises, if any. The Concessionaire must take timely possession of the Project Site and if it fails to take over the possession, the process may be terminated and the performance guarantee be forfeited. The Project Site shall be handed to the Concessionaire on as-is where-is basis and any changes in the site extent or conditions will not be considered.
- 8.6.2 The leased Project Site cannot be alienated/transferred/sub-leased/mortgaged, in part or full, to any third party. The Concessionaire shall under no circumstances be permitted to mortgage the Project Site leased to it. For the avoidance of doubt, it is clarified that the Concessionaire shall however be permitted raise Project Finance for implementation of the Project on the basis of the Concession Agreement.

8.7 Payment of the Lease Rentals

- 8.7.1 An interest free Three months Advance Lease Rental shall be paid to the Authority before the signing of the Concession Agreement towards the Advance Lease Rental for the first quarter, as per the terms of this RFP / Concession Agreement.
- 8.7.2 In consideration of the lease of the Site and the rights appurtenant thereto in favour of the Concessionaire, the Concessionaire shall, effective from the date of the Concession Agreement and during the Concession Period, pay Lease Rentals to the Authority in advance, on a quarterly basis. The Lease Rental for the first year shall be **₹2,28,00,000 (Indian Rupees Two Crore Twenty Eight Lakhs Only)**, i.e., 1% of Sub-Registrar Office (SRO) Value of the land (7.97 Acres @₹28,55,60,000 per Acre (i.e. ₹59,000 per Square Yard)). Applicable taxes, including the GST on the above shall also be paid by the Concessionaire over and above the Annual Lease Rental.
- 8.7.3 The Annual Lease Rental shall commence from the date of signing of the Agreement and shall be incremented by 5% every three year for the entire Concession Period.

8.8 Penalty for Delayed Payments

If the Concessionaire fails to make the lease rental payments to the Authority i.e. the quarterly advance payments within the stipulated period, a penalty @ 18% per annum on

the outstanding amounts would be effective from the date from which such payments are due, until the date the actual payment is made. Applicable GST shall be payable by the Concessionaire over and above the penalty amount. The Authority further reserves the right to forfeit the Performance Guarantee submitted by the Concessionaire, towards outstanding payments, including the quarterly lease rentals and ADP. The Authority shall terminate the agreement with the Concessionaire for failure to make the lease payments for 3 quarters from its due date, as per the terms of Agreement.

8.9 Bank Guarantee for Lease Rentals Security

- 8.9.1 The Concessionaire shall, in accordance with the provisions of the Concession Agreement, pay to the Authority, the Lease Rental in every Lease Year until the expiry of the Concession Period.
- 8.9.2 Upon achieving COD and prior to the release of the Performance Bank Guarantee by the Authority, the Concessionaire shall provide a Bank Guarantee (BG) with a validity of 3 years from a Nationalized or Scheduled Bank and encashable at Visakhapatnam, towards security for payment of the Lease Rental.
- 8.9.3 The BG shall be submitted at least 10 days prior to achieving Commercial Operation Date & before release of construction period Performance Security. Such BG shall be equivalent to the annual Lease Rent to be payable by the Preferred Bidder for the 6th year of Concession Period and shall be valid till the end of the 6th year of Concession Period. Thereafter, the said BG shall, at the end of every three years, during the subsistence of the Concession Agreement, be replaced with a fresh BG, of an amount equivalent to the Lease Rent for the 9th, 12th, 15th, 18th, 21st, 24th, 27th and 30th year of Concession Period respectively. The validity of each such fresh BG shall be three years.

8.10 Revenue Share / Additional Development Premium

- 8.10.1 The Concessionaire shall, in accordance with the provisions of the Concession Agreement, pay to the Authority a Revenue Share (as per the quoted ADP by the Preferred / Selected Bidder as % of Annual Gross Revenues of the Project or the Minimum Annual Assured Amount, whichever is higher) in every Year of the Concession Period commencing from the date of commencement of commercial operations of the Project or from the 4th year from the date of signing of concession agreement, until the expiry of the Concession Period or early termination. Applicable taxes, including the GST on the above shall also be paid by the Concessionaire over and above the Revenue Share / quoted Minimum Annual Assured Amount.

For the avoidance of doubt, in any given year, the Concessionaire shall be liable to pay the % Revenue Share or the corresponding quoted Minimum Annual Assured Amount), whichever is higher.

- 8.10.2 In any given year, the proportionate amount of corresponding quoted Minimum Annual Assured Amount shall be paid in advance on quarterly basis. Further, the Revenue Share will be based on the Audited Accounts and the Concessionaire shall finalize the Audit of

the Accounts for each Financial Year before June 30th. The balance Revenue Share, if any payable, will be paid before July 30th. In case of Delay, the Concessionaire shall be required to pay 18% penal interest until the date of actual payment, as per the terms of the Concession Agreement.

8.11 Concession Period

- 8.11.1 The Concession or Concession Period for the Project shall be 33 (thirty three) years (excluding construction period of 3 (three) years), commencing from the Date of Signing of Concession Agreement.
- 8.11.2 Upon successful completion of the Concession Period, the Concession Period shall be extendable, with Right of First Refusal (RoFR) to the Concessionaire, as per terms and conditions prevailing at that point of time.
- 8.11.3 At the end of the Concession/ Concession Period, the Project shall be transferred to the Authority as per the terms and conditions specified in the Concession Agreement, free of cost.

8.12 Additional Development Premium

- 8.12.1 The Concessionaire shall, in accordance with the provisions of the Concession Agreement, pay to the Authority the Additional Development Premium (ADP) in every Year of the Concession Period as Revenue Share as in clause 8.10 above, commencing from the date of commencement of commercial operation of the Project or the commencement of year 4 (four) from the date of signing of the Concession Agreement, until the expiry of the Concession Period or early termination, which shall be the % of Annual Gross Revenues of the Project or the Minimum Annual Assured Amount, whichever is higher, as per the bid of the Selected Bidder / Concessionaire. For the avoidance of doubt, in case of delay in commencement of operations of the Project, the ADP shall be payable from year 4 (four) from the date of signing of Concession Agreement.
- 8.12.2 The ADP shall be paid in advance in equal quarterly payments. Applicable taxes, if any on the above shall also be paid by the Concessionaire.

8.13 Project Review

Review of Project Implementation during Construction

If the authority intends (at the sole Discretion of the Authority), it can appoint an Independent Engineer/consultant for the review of project implementation during the Construction Period. However, the remuneration of the Independent Engineer shall be reimbursed by the Concessionaire to the Authority. Further, the Authority reserves the right to appoint APUIAML as the Independent Engineer / Consultant.

9 FRAUD AND CORRUPT PRACTICES

- 9.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LoI and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LoA or the Concession Agreement, the Authority may reject a Bid, withdraw the LoA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 9.1.2 Without prejudice to the rights of the Authority under Clause 9.1.1 hereinabove and the rights and remedies which the Authority may have under the LoA or the RFP / Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LoA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 9.1.3 For the purposes of this Clause 9, the following terms shall have the meaning hereinafter respectively assigned to them:
- a. **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 4.5.3.2 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to

any matter concerning the Project;

- b. **"Fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. **"Coercive practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d. **"Undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. **"Restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

10 PRE-BID MEETING

- 10.1.1 Pre-Bid meeting of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of each Bidder shall be allowed to participate in person on production of authority letter from the Bidder.
- 10.1.2 Bidders are advised to contact VMRDA to indicate whether or not they will attend and, if so, the number of attendees and their names, designation etc., at least two (2) working days prior to the date of the pre-bid meeting. The pre-bid queries shall be compiled and sent in the following format, along with a covering letter of the Bidder:

Sl. No.	Clause No. of RFP / Draft Concession Agreement and page no.	Clause as per RFP / Draft Concession Agreement	Query / Clarification Requested
1.			
2.			

- 10.1.3 Bidders shall also be provided the option of participating in the Pre-bid conference through Video Conference (VC). Such Bidders shall be required to make a formal request to the Authority vide email to mcvmrda@gmail.com latest by _____, 2023. The Authority shall provide the VC link to such Bidders prior to the Pre-bid conference. The Authority reserves its right to restrict admission to any unauthorized persons in attending the VC / Pre-bid Conference.
- 10.1.4 During the course of Pre-Bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications to written queries received only and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 10.1.5 The Bidders should submit the queries in writing or e-mail and the same should reach the Authority at least two (2) working days before the pre-bid meeting.
- 10.1.6 Response to the pre-bid meeting queries and addenda, if any, will be posted on the website www.apetrocurement.com which will form a part of the Bidding Documents. It shall be deemed that the Bidder whose Bid has been received, has read and accepted all such Clarifications / Response / Amendments/ Addendum/ Corrigendum, if any, prior to submission of its bid submitted in response to this RFP.
- 10.1.7 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

11 MISCELLANEOUS

- 11.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Visakhapatnam / Andhra Pradesh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 11.1.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - b. consult with any Bidder in order to receive clarification or further information;
 - c. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - d. Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
 - e. supplement/ modify/ amend/ alter the terms of the grant of Concession pursuant to this RFP, or the technical/ financial or any other parameter for selection or evaluation of the Bidders or any terms and conditions of this RFP.
- 11.1.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 11.1.4 The Bidding Documents are to be taken as mutually explanatory, unless otherwise expressly provided elsewhere in this RFP.

Section-II: Formats for Bid Submission (FBS)

PART A – FORMATS FOR BID SUBMISSION

APPENDICES	Format's for
Appendix A1	Covering Letter
Appendix A2	Checklist of Submissions
Appendix A3	Covering letter for submitting the Bank Guarantee for Bid Security and the Bank Guarantee format
Appendix A4	Letter of Undertaking
Appendix A5	Commitment to pay Annual Lease Rentals and Project Development Fee along with the Performance Security Bank Guarantee
Appendix A6	Consortium Agreement
Appendix A7	Power of Attorney for Appointing the Lead Member - Signed by All Members of the Consortium
Appendix A8	Power of Attorney for the Bid Signatory
Appendix A9	Statement of Legal Capacity

Appendix A1

Format for

COVERING LETTER

[On the Letterhead of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority
Siripuram Junction, Udyog Bhavan,
Visakhapatnam - 530003

Dear Sir,

Sub: Submission of Bid Comprising of Technical and Price Bids for “Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis”

1. We are submitting this Bid (Proposal) on our own.

(Or)

We are submitting this Bid (Proposal) as the Lead Member of a Consortium consisting of the following members, for and on behalf of the Consortium

S. No	Name of Consortium Members	Address
1 (Lead Member)	
2 (Member)	

As a Lead Member, we understand the obligations of the Concessionaire to implement the Project. We are enclosing the Consortium Agreement signed by all the members of the Consortium, nominating and authorizing us to act as ‘Lead Member’ for implementing the Project.

2. Having examined the RFP Documents, for the execution of the Concession Agreement for the captioned project, we the undersigned, offer to take up the development and operations of the Project on DFBOT basis for the Concession Period in conformity with the RFP / Draft Concession Agreement and accordingly are submitting our Bid Comprising of Technical and Price Bids for the **Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on**

Public Private Partnership (PPP) Basis.

3. This Bid and our written acceptance of it shall form part of the Concession Agreement to be signed between the Concessionaire and VMRDA. If selected as Concessionaire, we understand that it is on the basis of the technical, financial & organizational capabilities and experience of the Bidder taken together. We understand that the basis for our qualification will be our complete Bid submissions, submitted along with this letter, and that any circumstance affecting our continued eligibility as per RFP, or any circumstance which would lead or have led to our disqualification, shall result in our disqualification under this Bidding process.
4. We agree that
 - a. If we fail to permit VMRDA or its Authorised Representative for carrying out the inspection of works/ facilities during Concession Period

Or

 - b. If we fail to meet the Minimum Development Obligations (MDOs) and/or Technical Specifications and/or the Performance Standards according to the conditions/ stipulations of the RFP/ Concession Agreement,

VMRDA shall be at liberty to take action in accordance with the RFP/ Concession Agreement.
5. We undertake that, if our Bid is accepted, to complete the Project, commence operations and manage the Project, as per the RFP/ Concession Agreement.
6. We agree to abide by this Bid for a period of **180 (one hundred and eighty) days** from the Due Date fixed for submitting the same and it shall remain binding upon us and may be accepted at any time before the expiry of that period.
7. In the event of our Bid being accepted, we agree to enter into a formal Concession Agreement with VMRDA incorporating the conditions of the Bid including the draft Concession Agreement thereto annexed and written acceptance thereof.
8. We agree that, if our Bid is accepted, to furnish **Performance Security Bank Guarantee of ₹6,00,00,000 (Indian Rupees Six Crores only)** to VMRDA in the form as specified in the RFP as a precondition for signing of Concession Agreement.
9. We also agree that we would **pay Three Months interest free Advance Annual Lease Rentals for the first quarter** in the form of Demand Draft / Pay Order within 30 days from the date of issue of Letter of Award (LOA) as precondition for signing of Concession Agreement.
10. We also agree, that if our bid is accepted, to pay the non-refundable Project Development Fee of **₹4,80,00,000 plus applicable GST**, that shall be paid in the following manner:
 - (i) **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%, if applicable**, drawn in favor of **“The Metropolitan Commissioner, VMRDA”** in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable at Visakhapatnam.

(ii) **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only) plus GST at 18%**, drawn in favor of “**Andhra Pradesh Urban Infrastructure Asset Management Limited**” in the form of Demand Draft / Pay Order drawn from any Nationalised / Scheduled Banks (except co-operative Banks), and payable of Vijayawada

in the form of Demand Drafts / Pay Orders, within 30 days from the date of issue of Letter of Award (LOA), as precondition for signing of Concession Agreement, as specified in the RFP.

11. We also agree to, incorporate a SPV with 30 days from the date of the LOA, exclusively for implementing the Project, as per the terms of the RFP.
12. We agree that if we fail to fulfil any of the conditions mentioned at para 8, 9, 10 and 11 above, VMRDA has the right to forfeit the Bid Security being furnished by us along with this Bid and any other payments made till such date.
13. We agree, to furnish Bank Guarantee (BG) as security for the payment of the Lease Rentals at least 10 days prior to achieving Commercial Operation Date & before release of construction period Performance Security. Such BG shall be equivalent to the Lease Rental to be payable for the 6th year of Concession Period. Thereafter, we shall submit fresh BGs once in every three years, as mentioned in the RFP, until the end of the Concession Period.
14. We understand that VMRDA is not bound to accept any or all Bids it may receive.
15. We declare that we have disclosed all material information, facts and circumstances, which would be relevant to and have a bearing on the evaluation of our Bid and selection as Concessionaire.
16. We do, also, certify that all the statements made and/or any information provided in our proposal are true and correct and complete in all aspects.
17. We declare that in the event that VMRDA discovers anything contrary to our above declarations, it is empowered to forthwith disqualify us and our Bid from further participation in the Bid evaluation process and forfeit our Bid Security.

Dated this _____ day of _____ 2023

(Signature)

(Name of the person)

(In the capacity of)

Company Seal

(Name of firm)

Duly authorized to sign Proposal for and on behalf of (Fill in block capitals)

Appendix A2

Format for

CHECK LIST OF SUBMISSIONS

S.No	Enclosures to the Outer Envelope, Technical & Price Bid	Status (Submitted / Not Submitted)	Comments, If any
1	Demand Draft of ₹1,00,000 towards RFP Document Fee		
2	Covering Letter		
3	Covering letter for submitting the Demand Draft or Bank Guarantee for Bid Security along with Bid Security		
4	Letter of Undertaking		
5	Letter of Commitment		
6	Consortium Agreement <i>(In case the Bidder being a Consortium)</i>		
7	Power of Attorney for the Lead Member of the Consortium (In case the Bidder is a Consortium)		
8	Power of Attorney for the Bid Signatory		
9	Statement of Legal Capacity		
10	General Information		
11	Financial Data		
12	Development / Construction Experience Details		
13	Letters of Undertaking for Technical Bid and Minimum Development Obligations		
14	Signed RFP document along with Response to Pre-Bid Queries and Addenda / Corrigenda, if any		

14	Price Bid / Financial Bid	To be submitted online only through aprocurement mode only
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Appendix A3

Format for

COVERING LETTER FOR SUBMITTING BID SECURITY

[On the Letterhead of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority

Siripuram Junction, Udyog Bhavan,

Visakhapatnam - 530003

Dear Sir,

Sub: Submission of Bid Comprising of Technical and Price Bids for “Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis”.

As a part of the Bid for “Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis”, we hereby submit the Bid Security for **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs Only)** in the form of irrevocable and unconditional Bank Guarantee/ Demand Draft / Pay Order from Bank (which is a Nationalised/ Scheduled Bank (Not a Co-Operative Bank)) bearing No. _____ dated _____, issued by _____ Bank in favour of “The Metropolitan Commissioner, VMRDA”, payable / encashable at Visakhapatnam, Andhra Pradesh. This Bid Security shall be independent of the validity of the Bid and Concession Agreement between VMRDA and the Concessionaire, and shall be honoured by the issuing bank, irrevocably.

We agree that in the event of any breach or non-performance of the following terms and conditions contained in the RFP document:

- i. If we withdraw our Bid during the period of Bid Validity as specified in the RFP; or
- ii. If we refuse to accept the correction of errors in our Bid; or
- iii. If we submit a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by VMRDA, or
- iv. If we, having been notified of the acceptance of our Bid by the VMRDA during the period of Bid validity and if we:
 - a. Fail or refuse to execute the Concession Agreement in accordance with the RFP documents; or

- b. Fail or refuse to pay the interest free Advance Lease Rentals equaling to Three Months Lease Rentals, Project Development Fee and submitting Performance Security Bank Guarantee, in accordance with the RFP documents; or
- c. Fail to incorporate the SPC exclusively for implementing the Project.

VMRDA is empowered to forthwith disqualify our Bid and us from further participation in the Bid evaluation process and forfeit our Bid Security.

Yours faithfully,

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

Format for

BID SECURITY (BANK GURANTEE)

(On Requisite Stamp Paper)

B.G. No. Dated:

1. In consideration of you Visakhapatnam Metropolitan Regional Development Authority (VMRDA), having its office at, "Siripuram Junction, Udyog Bhavan, Visakhapatnam – 530003" (hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of _____ (a company registered under the Companies Act, 1956/2013) and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the **Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis** (hereinafter referred to as "the Project") pursuant to the RFP Document dated _____ issued in respect of the Project and other related documents including without limitation the draft Concession agreement (hereinafter collectively referred to as "Bidding Documents"), we _____ (Name of the Bank) having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clauses of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs Only)** (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs Only)**.

4. This Guarantee shall be irrevocable and remain in full force for a period of 240 (two hundred and forty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch at **Visakhapatnam, Andhra Pradesh** which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs Only)**. The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before _____ (indicate date falling 240 days after the Bid Due Date)].

Signed and Delivered by _____ Bank

By the hand of Mr./Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

Appendix A4

Format for

LETTER OF UNDERTAKING

[To be furnished by the Bidder, in case of Consortium to be given separately for members on their letterheads]

Date:

To
The Metropolitan Commissioner
Visakhapatnam Metropolitan Regional Development Authority
Siripuram Junction, Udyog Bhavan,
Visakhapatnam - 530003

Dear Sir,

Sub: Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis.

We confirm that we are not barred by Government of Andhra Pradesh (GoAP), any other State Government in India (SG) or Government of India (GoI), or any of the agencies of GoAP/GoI from participating in any category of infrastructure projects (Construction, BOT, DFBOT or otherwise) as On _____ (Bid Due Date).

Yours faithfully,

(Signature of Authorised Signatory)
(Name, Title, Address, Date)

Appendix A5

Format for

COMMITMENT FOR PAYEMENTS

[On the Letterhead of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority

Siripuram Junction, Udyog Bhavan,

Visakhapatnam - 530003

Dear Sir,

Sub: Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis – Commitment for Payments & Performance Security

We _____ (the “Member”), / [Our Consortium consisting of the following Members (the “Member”)]:

1. [Lead Member]
2. [Member 1]

Have submitted our bid for the **Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis.**

We hereby write to inform you that if we/ [the Consortium] are/[is] selected as the Preferred Bidder for implementing the project, we/[the Lead Member of the Consortium] shall pay / submit the following amounts/ Bank Guarantees to VMRDA:

- 1. Interest free Advance Lease Rentals equaling to Three Months of First Year Lease Rentals and non-refundable Project Development Fee plus GST within 30 days of issuance of Letter of Award in the form of Demand Draft / Pay Order drawn on any Nationalised/ Scheduled Bank (other than Co- Operative Banks).**
2. Performance Security in the form of unconditional and irrevocable Bank Guarantee favouring “The Metropolitan Commissioner, VMRDA”, encashable in Visakhapatnam for ₹6,00,00,000 within 30 days from the date of issuance of Letter of Award.

COMPANY SEAL

SIGNATURE _____

NAME _____

DESIGNATION _____

COMPANY _____

DATE _____

Appendix A6

Format for
CONSORITUM AGREEMENT
(In case the Bidder being a Consortium)

(On a Non-Judicial Stamp Paper of Rs. 100 duly attested by notary public)

THIS CONSORTIUM AGREEMENT is entered into on this the _____ day of 2023.

AMONGST

1. _____ Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. _____ Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at _____ (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS,

THE VISAKHAPATNAM METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY, represented by the “Siripuram Junction, Udyog Bhavan, Visakhapatnam – 530003” (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Proposals (the “Bids”) by its Request for Proposal No. dated (the “RFP”) for short-listing of bidders for **development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India** (the “Project”) through Public Private Partnership.

- A. The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- B. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

- **Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

- **Consortium**

The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

- **Covenants**

The Parties hereby undertake that in the event the Consortium is declared as the selected Bidder and awarded the Project, it shall incorporate a Special Purpose Company (the “SPC”) under the Indian Companies Act, 2013 for entering into an Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

- **Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a. Party of the First Part shall be the Lead member of the Consortium and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPC shall become effective;
- b. Party of the Second Part shall be the other Member of the Consortium

and

The roles and responsibilities of the Members of the Consortium shall be as follows:

- a. The Party of the First Part (Lead Member) shall be responsible for:
 - (i)
 - (ii)
 - (iii)
- b. The Party of the Second Part shall be responsible for:
 - (i)
 - (ii)

- **Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

- **Shareholding in the SPC**

a. The Parties agree that the proportion of shareholding among the Parties in the SPC shall be as follows:

- First Party: _____ %
- Second Party: _____ %

b. The Parties together shall be required to hold an equity shareholding of at least 51% of the paid up and subscribed equity of the Concessionaire until five years from the date of execution of the Concession Agreement. The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPC shall, at all times till the fifth anniversary of the date of execution of the Concession Agreement, be held by the Parties of the First and Second Part whose experience and net worth have been reckoned for the purposes of qualification and short-listing of Applicants for participation in the Bid Stage for award of the Project

c. The Parties also undertake that each member of the consortium shall hold a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPC at all times till the tenth anniversary of the date of execution of the Concession Agreement.

d. In addition to the above, the Parties undertake that they shall collectively hold an equity shareholding of at least 100% of the paid up and subscribed equity of the Concessionaire until date of execution of the Concession Agreement and thereafter at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPC at all times until the tenth anniversary of the date of execution of the Concession Agreement.

e. The Parties undertake that they shall comply with all equity lock-in requirements set forth in the RFP and more particularly the Concession Agreement.

- **Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and Board Resolution/ Power of

Attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- i. Require any consent or approval not already obtained;
 - ii. Violate any Applicable Law presently in effect and having applicability to it;
 - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

- **Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved and the Commercial Operations Date is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

- **Miscellaneous**

That in case the project is awarded to the Consortium, the Consortium will carry out all the responsibilities as the Concessionaire and will comply with all the terms and conditions of the Concession Agreement as would be entered with the Authority.

This Consortium Agreement shall be governed by laws of India.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of LEAD MEMBER by:	SECOND PART
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

Notes:

1. The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Consortium Agreement should attach a copy of the extract of the charter documents and documents such as Resolution / Power of Attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Consortium Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

Appendix A7

Format for

**POWER OF ATTORNEY FOR APPOINTING THE LEAD MEMBER –
TO BE PROVIDED BY ALL MEMBERS OF THE CONSORTIUM**

(On a Non-Judicial Stamp Paper of Rs. 100 duly attested by notary public)

Whereas the Visakhapatnam Metropolitan Regional Development Authority (VMRDA) (“the Authority”) has invited applications from interested parties for the “**Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis**” (“the Project”).

Whereas, _____ and _____ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____ [the name and address of the registered office] and _____ having our registered office at _____ [the name and address of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s _____ having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorize the Attorney (with power to sub delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/Contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 2023.

For _____
(Signature)

(Name & Title)

For _____
(Signature)

(Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

- For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries conforming Appostille certificate.

Appendix A8

Format for

POWER OF ATTORNEY FOR THE BID SIGNATORY

(On a Non-Judicial Stamp Paper of Rs. 100 duly attested by notary public)

Know all men by these presents, We _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), _____ son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for submission of our bid for the **Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis** proposed by the VMRDA (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND

we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON ____ DAY OF __, 2023

For _____

(Signature)

(Signature, name, Designation and Address)

Witnesses:

1.

[Notarized]

2.

Accepted

_____ (Signature)

(Name, Title and Address of the Attorney)

Note:

- To be executed by the sole Applicant or the Lead Member in case of a Consortium as the case may be.
- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries conforming Appostille certificate.

Appendix A9

Format for

STATEMENT OF LEGAL CAPACITY

*(To be forwarded on the letterhead of the Bidder (in case of Single Bidder) or Lead Member
(in case of a Consortium))*

Ref. Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority

Siripuram Junction, Udyog Bhavan,

Visakhapatnam – 530003

**Sub: Development of Convention Centre & 5 Star Category Hotel / Resort with other
Waterfront Entertainment Facilities on prime land along Beach Road at
Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis**

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert member's name) will act as the Lead Member of our Consortium*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the Consortium on its behalf* and has been duly authorized to submit the RFP and required submissions. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

Authorized Signatory

For and on behalf of

*Please strike out whichever is not applicable.

PART B – FORMATS FOR TECHNICAL BID SUBMISSION

APPENDICES	Format's for
Appendix B1	General Information of the Bidder
Appendix B2	Financial Data
Appendix B3	Development Experience
Appendix B4	Letter of Undertaking for Technical Bid

Appendix B1

Format for

GENERAL INFORMATION OF THE BIDDER

1.
 - a. Name:
 - b. Country of Incorporation:
 - c. Address of the Corporate Headquarters and its Branch Office(s), if any, in India:
 - d. Date of Incorporation and/ or Commencement of Business:
2. Brief description of the Company including details of its main lines of business and Proposed Role and Responsibilities in this Project:
3. Details of Individual(s) who will serve as the Point of Contact/ Communication for the Authority:
 - a. Name:
 - b. Designation:
 - c. Company:
 - d. Address:
 - e. Telephone Number:
 - f. E-Mail Address:
 - g. Fax Number:
4. Particulars of the Authorized Signatory of the Applicant:
 - a. Name:
 - b. Designation:
 - c. Address:
 - d. Telephone Number:
 - e. Fax Number:
5. In case of a Consortium:
 - a. The information above (1-4) should be provided for all the members of the Consortium.
 - b. A copy of the Consortium Agreement should be attached to the Application.
 - c. Information regarding role of each member should be provided as per table below:

S. No	Name of Member	Role* {Refer Sec 1 of RFP}	Percentage of Equity in the Consortium {Refer Sec I of RFP}
1			
2			

d. The following information shall also be provided for each member of the Consortium:

Name of Applicant /Member of Consortium

S.No.	Criteria	Yes	No
1.	Has the Applicant/ Constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by them, from participating in any Project (BOT, DFBOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application?		
3.	Has the Applicant/ Constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Applicant and each of the members of its Consortium (where applicable) disclosing material non-performance or contractual noncompliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

COMPANY SEAL

SIGNATURE _____

NAME _____

DESIGNATION _____

COMPANY _____

DATE _____

Appendix B2

Format for
FINANCIAL DATA

Description (Net-worth related data)	Last Financial Year (2022-2023) (All figures in Rs. Cr)
Subscribed Share Capital	
(add) Paid up Share Capital	
(add) Reserves	
(add) Surplus	
(Subtract) (Revaluation reserves + Miscellaneous Expenditure not written off + Deferred Revenue Expenditure + Deficit in P & L Account if any)	
Net-worth	

(For the avoidance of doubt, Net Worth for the purpose of this RFP shall exclude any valuation of land asset holdings)

Note:

1. In case of Applicant being a Consortium, the above data shall be submitted for the Lead Member and the other member also.
2. The Sole Applicant /Consortium shall submit Audited Annual Accounts of the Lead Member and the Other Member in support of the financial data
3. The above data must be submitted for all Consortium Members or Sole Applicant as the case may be duly certified by Statutory Auditor/Chartered Accountant.

Signature of the Statutory Auditors

(With seal and registration no)

Signature _____

Name _____

Designation _____

Company _____

DATE _____

Appendix B3

Format for
TECHNICAL CAPACITY

Bidder	Project Type [MICE / Tourism Related OR Core Sector]	Category [Development / Construction OR Operations]	Project Cost (Rs. Crore)
Single entity Bidder /Lead Member			
Other Member			
MICE / Tourism Related Projects			
Core Sector Projects			
Grand Total			

Signature _____

Name _____

Designation _____

Company _____

Date _____

ELIGIBLE PROJECTS

Item	Particulars of the Project
Project Name	
Type of Project [Tourism Related (including MICE, Tourism, etc.)] [Core Sector (including Road, Building, Port, Telecom, Water Supply etc.)]	
Category [Development / Construction / Operations]	
Location	
Project Cost (year wise incurred / executed in last 10 years (Rs. Crore)	
Total Project Cost	
Project Revenues, if applicable (year wise in last 10 years (Rs. Crore)	
Date of commencement of project / contract OR Date of commencement of project operations / operations contract	
Date of completion/commissioning	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	

1. Bidders are expected to provide information in respect of each Eligible Project in this Annex.
2. A separate sheet should be filled for each Eligible Project.
3. If the Bidder is claiming Development experience, it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding Development of Projects

Based on its books of accounts and other published information authenticated by it, this is to certify that (Name of the Bidder/Member/Associate) is/ was an equity shareholder in (Title of the project company) and holds/ held Rs cr. (Rupees..... crore) of equity (which constitutes % of the total paid up and subscribed equity capital) of the project company from (date) to (date). The project was/is likely to be commissioned on (date of commissioning of the project).

We further certify that the total estimated capital cost of the project (excluding land) is Rs.cr (Rupeescrore), of which Rs. cr. (Rupees crore) of capital expenditure was incurred during the past ten financial years as per year-wise details noted below:

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, Name, and designation of the authorised signatory)

4. If the Bidder is claiming Construction experience, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor regarding Construction Experience

Based on its books of accounts and other published information authenticated by it, {this is to certify that _____ (Name of the Bidder/Member/Associate) was engaged by _____ (Title of the project company) to execute _____ (Name of project) for (nature of project)}. The construction of the project commenced on _____ (date) and the project was/ is likely to be commissioned on _____ (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received/paid Rs. _____ cr. (Rupees crore) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost (excluding land) of the project is Rs. _____ cr. (Rupees _____ crore), of which the Bidder/Member/Associate received/paid Rs. _____ cr. (Rupees _____ crore), during the past ten financial years as per year-wise details noted below:

{It is further certified that the payments/ receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, Name and designation of the authorised signatory).

Attach explanatory notes to the Certificate, if necessary.

In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder, or its Associate may provide the certificates required under this RFP

5. If the Bidder is claiming Operations (i.e. collection and appropriation of revenues) experience, it should provide a certificate from its statutory auditors or the client in the format below:

Certificate from the Statutory Auditor regarding Operations (i.e. collection and appropriation of revenues) Experience

Based on its books of accounts and other published information authenticated by it, {this is to certify that _____ (Name of the Bidder/Member/Associate) was engaged by _____ (Title of the project company) to own / own and operate _____ (Name of project)}. The operations period of _____ of the project commenced on _____ (date) and the project was/ is under operations of _____ until on _____ (date, if any). It is certified that (name of the Bidder/ Member/ Associate) received and appropriated Rs. _____ cr. (Rupees crore) by way of revenues for the aforesaid operations, within the last 10 years.

We further certify that the Bidder/Member/Associate received and appropriated Rs. _____ cr. (Rupees crore) as revenues from operations, during the past ten financial years as per year-wise details noted below:

{It is further certified that the receipts indicated above are restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ consortium.}

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, Name and designation of the authorised signatory).

6. In the event that credit is being taken for the Eligible Experience of an Affiliate, as per the RFP, the Bidder should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Affiliate

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of _____ (Name of the Applicant/ Consortium Member/ Affiliate) is held, directly or indirectly, by _____ (Name of Associate/ Applicant/ Consortium Member). By virtue of the aforesaid shareholding, the latter exercises control over the former, who is an Affiliate in terms of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the shareholding of the Applicant/ Consortium Member and the Affiliate. In the event the Affiliate is under common control with the Applicant/ Consortium Member, the relationship may be suitably described and similarly certified herein.}

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, Name, and designation of the authorised signatory).

Appendix B4

Format for

LETTER OF UNDERTAKING FOR TECHNICAL BID

[On the Letterhead of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority

Siripuram Junction, Udyog Bhavan,

Visakhapatnam - 530003

Sub: Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis

Dear Sir,

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

We hereby agree and undertake as under:

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

We hereby undertake that if the Project is awarded to us, we will meet the Minimum Development Obligations, as specified below, the Performance Standards as specified in the RFP and timely pay the Annual Lease Rentals and Additional Development Premium as stipulated in the RFP / Concession Agreement.

We also undertake to meet the statutory requirements of the laws of Local Authority, State Government and that of the Government of India, seek all the statutory licenses from time to time as required to develop and operate the project for the Concession Period, pay all the statutory taxes, license fees, registration fees, duties, payable to Government from time to time and any other rules and regulations of the both State and Central Government as applicable from time to time during the Concession period.

We hereby agree to develop and operate the Project for the Concession Period of 33 years (excluding construction period of 3 years) as per the requirements specified hereunder and hereby give our compliance for the same:

Sl. No.	Components	Details
1.	<p style="text-align: center;">Minimum Development Obligations</p>	<p>1. Convention Centre with not less than 5 Star Category Hotel / Resort Within Thirty Six (36) months* of the Agreement date, following shall be implemented:</p> <p>(i) <u>A Convention Centre comprising:</u></p> <ul style="list-style-type: none"> a) Multi-purpose Convention Hall, air-conditioned Main Hall (with the ceiling of minimum 15 feet high; area to accommodate minimum 2500 persons in theatre-style seating) b) This multi-purpose hall shall have no fixed seating and shall be with partitions for flexibility in conducting multiple events simultaneously c) The multi-purpose hall must be capable of hosting and catering to Meetings, Events, Exhibitions of National & International level. <p>(ii) <u>A not less than 5 Star category Hotel comprising:</u></p> <ul style="list-style-type: none"> a) Not less than 200 guest rooms b) Obtain not less than 5 Star category certification from the Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India, within 180 days of commencement of operations <p>2. <u>Other Water Front Entertainment Facilities:</u> Within Thirty Six (36) months* of the Agreement date, following shall be implemented:</p> <p>(i) Water Front Entertainment Facilities (in the form and manner as permissible under the applicable CRZ Norms) such as:</p> <ul style="list-style-type: none"> a) Shack Restaurant(s), Café(s) (with temporary structures / canopies, etc.) b) Party Lawns with landscaping / hardscaping (including Amphitheatre, etc) for outdoor events c) Flea Market d) Exhibition Venue <p>The above specified MDOs are subject to the Applicable Development Control Regulations as applicable from time to time. Further, in addition to the MDOs, the Concessionaire shall be permitted to develop any other additional tourism</p>

Sl. No.	Components	Details
		<p>facilities as listed in the Andhra Pradesh Tourism Policy 2020-2025 (in the form and manner as permissible under the applicable CRZ Notification)</p> <p>*In case of the MDOs that are currently not permissible as per the currently applicable Development Control Regulations / applicable CRZ Notification, the timeline for the implementation of the same shall commence from the date of such amendment / notification permitting the same.</p>
2.	Other Obligations / Conditions	<p>a. Adopt water conservation, water recycling & reuse, rainwater harvesting, if possible, zero discharge of wastewater; and also incorporate Energy efficient designs & utilities.</p> <p>b. The Project shall be user friendly and provide eased access to differently able persons to all the project facilities in accordance with “Persons with Disabilities Act, 1995” with subsequent amendments and ‘UN Convention for Rights of Persons with Disabilities (UNCRPD)’.</p> <p>c. Obtaining all the applicable statutory approvals, licenses and clearances shall be the responsibility of the Concessionaire.</p>
3.	Development Controls	<p>Undertake to develop the Project in conformity to the Development Control Regulations as applicable to the Project Site from time to time.</p> <p>We understand that as on current date, the following development control regulations shall apply:</p> <ul style="list-style-type: none"> ● G.O. Ms.No.119, MA&UD, dt. 28.03.2017 issued by Municipal Administration and Urban Development Department, GoAP ● G.O. Ms.No.136 dated 08.11.2021, MA&UD – VMRDA Perspective Plan 2051 & Master Plan 2041 ● Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2011^s ● Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2019, as and when made applicable in the State of Andhra Pradesh ● A.P. Tourism Policy 2020-25 ● Any other rules / regulations of State, Central & Local

Sl. No.	Components	Details
		<p>Authorities</p> <p><i>^sBidders are required to take note that the Government of Andhra Pradesh is in the process of taking up necessary steps including but not limited to updating CRZ Maps, Tourism Plan, Coastal Zone Management Plan (CZMP) as per the CRZ Notification of 2019 and the same shall be applicable to the Project Site from the date of such notification. Until such time the CRZ Notification of 2011 shall only be applicable. While Bidders are required to take note of the same while preparation of its Bids, VMRDA shall take no responsibility of the date of notification of such revised CZMP or the applicability of the CRZ Notification of 2019 or the content of the CRZ Maps / Tourism Plan with respect to the Project Site and the same shall be at the sole risk and liability of the Selected Bidder. Further, VMRDA shall take no responsibility of the development potential considered by the Bidders in their Bids vis-à-vis the permissible developments and it shall be the sole responsibility of the Selected Bidder to adhere to the Development Control Regulations as applicable to the Project Site from time to time. For the avoidance of doubt, it is clarified that the Bid submitted shall not be negotiable on account of certain envisaged developments by the Selected Bidder at the time of its Bids, not permitted by the APCZMA or other concerned Authorities.</i></p>
4.	Technical Specifications	<ol style="list-style-type: none"> a. Hotel and Hospitality standards as applicable of Ministry of Tourism/ GoI / Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India or equivalent. b. Construction specifications as per applicable BIS Codes c. National Building Code 2005 and other Indian & International Standards.
5.	Environmental / CRZ Norms	<ol style="list-style-type: none"> a. Mandatory Compliance of all Environmental Norms of the State and Central Governments as may be applicable for the Project. b. CRZ Notification of 2011 and 2019, as applicable from time to time
6.	Applicable Permits	Obtain and maintain at own cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in Compliance therewith.

We hereby assure you and guarantee that in future, from time to time whenever we are required to undertake or follow any specific guidelines / laws, we shall do the needful as required to ensure that the project and the Concessionaire complies with all statutory, regulatory and legal requirements.

Yours faithfully,

(Signature of Authorised Signatory)

(Name, Title, Address, Date)

Note: To be signed by the Sole Bidder / Lead Member in case of a Consortium

PART C – FORMAT FOR FINANCIAL BID SUBMISSION

APPENDICES	Format's for
Appendix C1	Price Bid / Financial Bid & Letter

Appendix C1

FINANCIAL BID

BIDDERS ARE REQUIRED TO NOTE THAT THE PRICE BID / FINANCIAL BID SHALL BE SUBMITTED ONLY THROUGH THE APROCUREMENT MODE ONLY AND THE QUOTED BID SHALL EXCLUDE APPLICABLE TAXES, GST, ETC).

ANY BIDDER SUBMITTED ITS FINANCIAL BID SHALL BE DEEMED TO HAVE UNCONDITIONALLY ACCEPTED THE UNDERTAKING CONDITIONS SET BELOW

(On letter head of Bidder / Lead Member of Consortium)

Date:

To

The Metropolitan Commissioner

Visakhapatnam Metropolitan Regional Development Authority

Siripuram Junction, Udyog Bhavan,

Visakhapatnam - 530003

Sub: Development of Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis

Dear Sir,

1. With reference to your RFP document dated _____, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
3. I/ We believe that we/ our Consortium satisfy(s) the Technical & Financial criteria and meet(s) the requirements as specified in the RFP document.
4. I/ We declare that we/ any Member of the Consortium, or our/ its Affiliates are not a Member of a/ any other Consortium submitting a Bid for the Project.
5. In response to the RFP document, I/we hereby offer to pay VMRDA as below:
 - (i) An Additional Development Premium (ADP) in terms of 'Minimum Share of Gross Annual Turnover' as in column II (a) below.
 - (ii) Additional Development Premium in terms of share of the Gross Annual Turnover from the Project payable to VMRDA by us shall be the higher of that as quoted in column II (a) or the revenue share at the percentage quoted

by us in column II (b) of the actual Gross Annual Turnover for year under consideration.

(iii) The Additional Development Premium quoted by us (i.e. excluding the Construction Period) are as below:

Column (1)	Column (2)		Column (3)	Column (4)
Year (for the avoidance of doubt, 1st Year of Operations shall be Year 4 of Concession Period, where year 1 to 3 of Concession Period shall be Construction Period)	Column (2) (a)	Column (2) (b)	ADP in terms of <u>Minimum</u> Share of Gross Annual Turnover (Amount in ₹)	ADP in terms of <u>Minimum</u> Share of Gross Annual Turnover in Percentage Terms to be quoted
	ADP in terms of Minimum Share of Gross Annual Turnover to be quoted by the bidder subject to a minimum of that given in column 3 in Absolute Terms (Amount in ₹)	% of Gross Annual Turnover, subject to minimum of that given in column 4		
Construction Period Year 1	-	-	-	-
Construction Period Year 2	-	-	-	-
Construction Period Year 3	-	-	-	-
1	{2(a)(1)}	{2(b)(1)}	-	5%
2	{2(a)(2)}	{2(b)(2)}	{2(a)(1)}	{2(b)(1)}
3	{2(a)(3)}		{2(a)(2)}	{2(b)(2)}
4	{2(a)(4)}		1.05 x {2(a)(1)}	{2(b)(3)}
5			{2(a)(4)}	{2(b)(4)}
6			{2(a)-(5)}	{2(b)(5)}

7	{2(a)(7)}		1.05 x {2(a)(4)}	{2(b)(6)}
8			{2(a)(7)}	{2(b)(7)}
9			{2(a)(8)}	{2(b)(8)}
10	{2(a)(10)}		1.05 x {2(a)(7)}	{2(b)(9)}
11			{2(a)(10)}	{2(b)(10)}
12			{2(a)(11)}	{2(b)(11)}
13	{2(a)(13)}		1.05 x {2(a)(10)}	{2(b)(12)}
14			{2(a)(13)}	{2(b)(13)}
15			{2(a)(14)}	{2(b)(14)}
16	{2(a)(16)}		1.05 x {2(a)(13)}	{2(b)(15)}
17			{2(a)(16)}	{2(b)(16)}
18			{2(a)(17)}	{2(b)(17)}
19	{2(a)(19)}		1.05 x {2(a)(16)}	{2(b)(18)}
20			{2(a)-19}	{2(b)(19)}
21			{2(a)(20)}	{2(b)(20)}
22	{2(a)(22)}		1.05 x {2(a)(19)}	{2(b)(21)}
23			{2(a)(22)}	{2(b)(22)}
24			{2(a)(23)}	{2(b)(23)}
25	{2(a)(25)}		1.05 x {2(a)(22)}	{2(b)(24)}
26			{2(a)(25)}	{2(b)(25)}

27			{2(a)(26)}	{2(b)(26)}
28	{2(a)(28)}		1.05 x {2(a)(25)}	{2(b)(27)}
29			{2(a)-28}	{2(b)(28)}
30			{2(a)-29}	{2(b)(29)}
31	{2(a)(31)}		1.05 x {2(a)(28)}	{2(b)(30)}
32			{2(a)(31)}	{2(b)(31)}
33			{2(a)(32)}	{2(b)(32)}
	<p>The NPV of the above ADPs quoted, calculated in MS Excel, by applying the formula: NPV(10%, [Min . Assured ADP Construction Period Year 1] : [Min. Assured ADP Year 33]) is _____</p>			

6. I / We Accept that,

- (i) Payment of the Additional Development Premium in terms of Minimum Share of Gross Annual Turnover amount as quoted above shall be paid by us in advance quarterly instalments, payable on or before 7th of the first month of each quarter to VMRDA.
- (ii) The balance if any, between the minimum revenue share quoted in absolute figures and the quoted percentage(s) share of revenue on actual basis shall be paid within 90 days from the date of approval of Annual Accounts by the SPC Board to VMRDA for each year, and before 30th June of each year.
- (iii) We understand and abide that, in case the amount(s) & percentages quoted by us in the Column 2a & Column 2b do not conform to minimum stipulations

of Column 3 and Column 4, it shall be treated as error(s) on our part and VMRDA shall have the right to correct the same in accordance with minimum stipulation of Column 3 and Column 4, for the purposes of NPV calculations and Price Bid Evaluation.

- (iv) We shall abide by the above offer/quote and terms condition of the RFP, in case VMRDA selects us as the Preferred Bidder.
7. The Additional Development Premium has been quoted by us after taking into consideration all the terms and conditions stated in the RFP / Concession Agreement, our own estimates of costs and after a careful assessment of the site, the applicable CRZ Notifications, our independent due diligence, and all the conditions that may affect the project cost and implementation of the project.
 8. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
 9. I/We (the Consortium Members) agree and undertake and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of the Commercial Operations Date, in accordance with the Concession Agreement.
 10. We further agree that the Additional Development Premium quoted above will be paid from the date of commencement of operations / 4th year from the date of signing of concession agreement (where year 1 – 3 shall be the Construction Period), up to the of the Concession Period. This shall be in addition to the Annual Lease Rentals. Applicable GST, as applicable, shall be paid over and above the quoted amounts.
 11. We abide by the above offer/ quote as per terms of the RFP, if VMRDA selects us as the Preferred / Selected Bidder. We also understand that, in case any differences between the quoted amount in words and figures, the highest amount will be considered as our quote towards Additional Development Premium.
 12. We undertake that the minimum Assured Annual Additional Development Premium values quoted above are strictly adhering to the minimum prescribed values specified in the format and in case of any discrepancies noted by VMRDA, VMRDA reserves the sole right to either correct the errors on its own, as per the Minimum Values specified in the formats. We further undertake that in case of any such errors by us and corrections by VMRDA, if any, we shall unconditionally accept the same, failing which our Bid shall be rejected and EMD submitted by us shall be forfeited by VMRDA in such case.
 13. We accept the condition of the RFP that the Highest Bidder shall be declared by VMRDA only after evaluation of the Financial Bid / Price Bid and verification of the quoted NPV vis-à-vis the evaluated NPV of the Minimum Assured ADPs Quoted by us in each year, as above, and as scanned and submitted in our Financial Bid / Price Bid. In such case, we unconditionally accept that VMRDA reserves the right to edit and correct the Auto-populated results for the Highest Bidder computed by the e-procurement portal arrived by comparing the quoted NPV values only.

Yours faithfully,

(Signature of Authorised Signatory)

(Name, Title, Address, Date)

Place:

Name and seal of Bidder/Lead Member

Section-III: Development Controls & Technical Specifications

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1 SCOPE OF WORKS

The responsibility of the Bidder shall include to take up all activities that are required to be undertaken, in order to comply with the Minimum Development Obligations, as per Permitted Developments / Activities, Prohibited Developments / Activities and Applicable Development Controls specified in this section of RFP and the terms and conditions of the RFP and the Concession Agreement. Nothing containing in this Section III shall be construed to limiting the scope / role and responsibility of the Concessionaire specified in the RFP / Concession Agreement. The Project Facilities would need to be planned, designed, and constructed in accordance with the Specifications & Standards provided and Maintenance and Performance Standards provided in this section of RFP.

1.1 Project Scope

The Scope of the Project includes design, construction, management, operation, and maintenance of the following components for the Concession Period of 33 years, excluding construction period of 36 Months, as per the Minimum Development Obligations (MDOs) specified in the RFP for development of:

- **Convention Centre & 5 Star Category Hotel / Resort**
- **Waterfront Entertainment Facilities**

1.2 Bidder/Developer's Scope of Work

i. Design, Finance, and Implementation:

This includes designing and detailing of the facilities as per the guidelines provided in Section I & III of the RFP and catering to the existing and latent demand requirements.

- Conceptualization and designing of the project and obtaining the Approval of the Authority on the Project Detailed Project Report.
- Providing infrastructure and support facilities
- Obtaining all necessary applicable permits for the Project
- Construction of all facilities including Convention Centre & 5 Star Category Hotel / Resort, Waterfront Entertainment Facilities
- Marketing the facilities.
- Arranging finances for the Project.

ii. Maintenance Works:

Maintenance works include routine and periodic maintenance activities such as maintenance of circulation area, Key building, amenities, parking area, pavement, drainage and sewerage, other building services, mechanical equipment, etc.

iii. Operations Management

This includes Operation of 5 Star Category Hotel / Resort & Waterfront Entertainment Facilities and other allied facilities and related activities during routine and periodic maintenance activities.

2 INFORMATION TO BIDDER

Layout Plan: The existing site plan and development guidelines are provided in this section. The developer is given full freedom to plan the layout as per his own market assessment subject to meet the Minimum Development Obligations and Local Development Control Regulations. The land extent of the Project Site earmarked is as demarcated in the Site Plan and specified in the Concession Agreement. The Developer shall however be restricted from developing any of the prohibited activities specified in the Concession Agreement.

Component Details: The details of project components are provided in Section I of this Bidding Document as Minimum Development Obligations (MDOs). Components other than those indicated in the MDOs may be proposed by the bidder in his Detailed Project Report (DPR) to be submitted subsequent to signing the Agreement, subject to the terms and conditions of the Concession Agreement.

Technical Specifications: For design and execution of various facilities, broad guidelines and specifications have been provided in Section III of this RFP. However, it is the developer's responsibility to ensure that the facilities are adequately provided according to applicable standards.

Applicable Regulations/ Guidelines – Quick Reference:

S. No.	Description of Parameter	Applicable Standards	Remarks
1	Development Controls and regulations	Andhra Pradesh Building Rules – 2017 issued vide G.O. Ms. No. 119 by MA&UD, Dt. 28.03.2017 and amendments thereon from time to time and National Building Code (NBC).	Any other applicable regulations/stipulations, of any other statutory authorities applicable in the Local Body.
2	Andhra Pradesh Tourism Policy 2020-2025	Development / Activities shall be limited to those listed in the Policy.	Any other development / activity not listed in the Policy shall be prohibited
3	VMRDA Master Plan 2041	G.O. Ms.No.136 dated 08.11.2021, MA&UD – VMRDA Perspective Plan 2051 & Master Plan 2041, and subsequent amendments, if any Development / Activities shall be limited to those listed in the Master plan	Any other applicable regulations/stipulations, of any other statutory authorities applicable in the Local Body.

Request for Proposal - Section III: Development Controls and Technical Specifications

4	Costal Regulation Zone (CRZ 2011)	Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2011	Any other applicable regulations/stipulations, of any other statutory authorities.
5	Costal Regulation Zone (CRZ 2019)	Coastal Regulatory Zone Notification by the Ministry of Environment & Forest, GoI, 2019, as and when made applicable in the State of Andhra Pradesh, and subsequent amendments, if any	Any other applicable regulations/stipulations, of any other statutory authorities, as and when made applicable.
6	Hotel and Restaurant Association Classification Committee	Certification of Star Category from HRACC, Ministry of Tourism, India	Any other applicable regulations/stipulations, of any other statutory authorities.
7	Spatial planning and architectural design guidelines	Urban Development Plans Formulation & Implementation guidelines (UDPFI) and Time Saver Standards.	Any other applicable regulations/stipulations, of any other statutory authorities.
8	Facilities for Persons with Different (Differently abled Persons)	Persons with Disabilities Act, 1995 with subsequent amendments and 'UN Convention for Rights of Persons with Disabilities (UNCRPD).	Any other applicable regulations/stipulations, of any other statutory authorities.
9	All Pavements, Roads, and Signage	Indian Road Congress (IRC) & Ministry of Road Transport and Highways (MORTH) specifications.	Any other applicable regulations/stipulations, of any other statutory authorities.
10	Building construction including structures, utilities, infrastructure facilities, etc.	National Building Council (NBC) regulations.	Any other applicable regulations/stipulations, of any other statutory authorities.

11	Fire Protection and Detection Services.	National Fire Protection Authority (NFPA) regulations.	Any other applicable regulations/stipulations, of any other statutory authorities.
12	Performance Standards	ISO 9001: 2008	Any other applicable regulations/stipulations, of any other statutory authorities.

3 PROJECT CONCEPT

Visakhapatnam Metropolitan Regional Development Authority (VMRDA) proposes for Development of Convention Centre & 5 Star Hotel / Resort with Other Water Entertainment Facilities in Visakhapatnam on Public Private Partnership (PPP) Basis (the “Project”). The proposed site admeasuring 7.97 acres (approx.) is situated on a prime land along beach road at Visakhapatnam, Andhra Pradesh. The proposed development is envisaged on Design, Finance, Build, Operate and Transfer (“DFBOT”) format of PPP.

4 SITE LOCATION & FEATURES

The proposed site located at along beach road, Visakhapatnam is strategically located, spreading across approx. 7.97 acres. The Site is well connected with the road network and all major modes of transportation.

Figure 4-1 Site Location

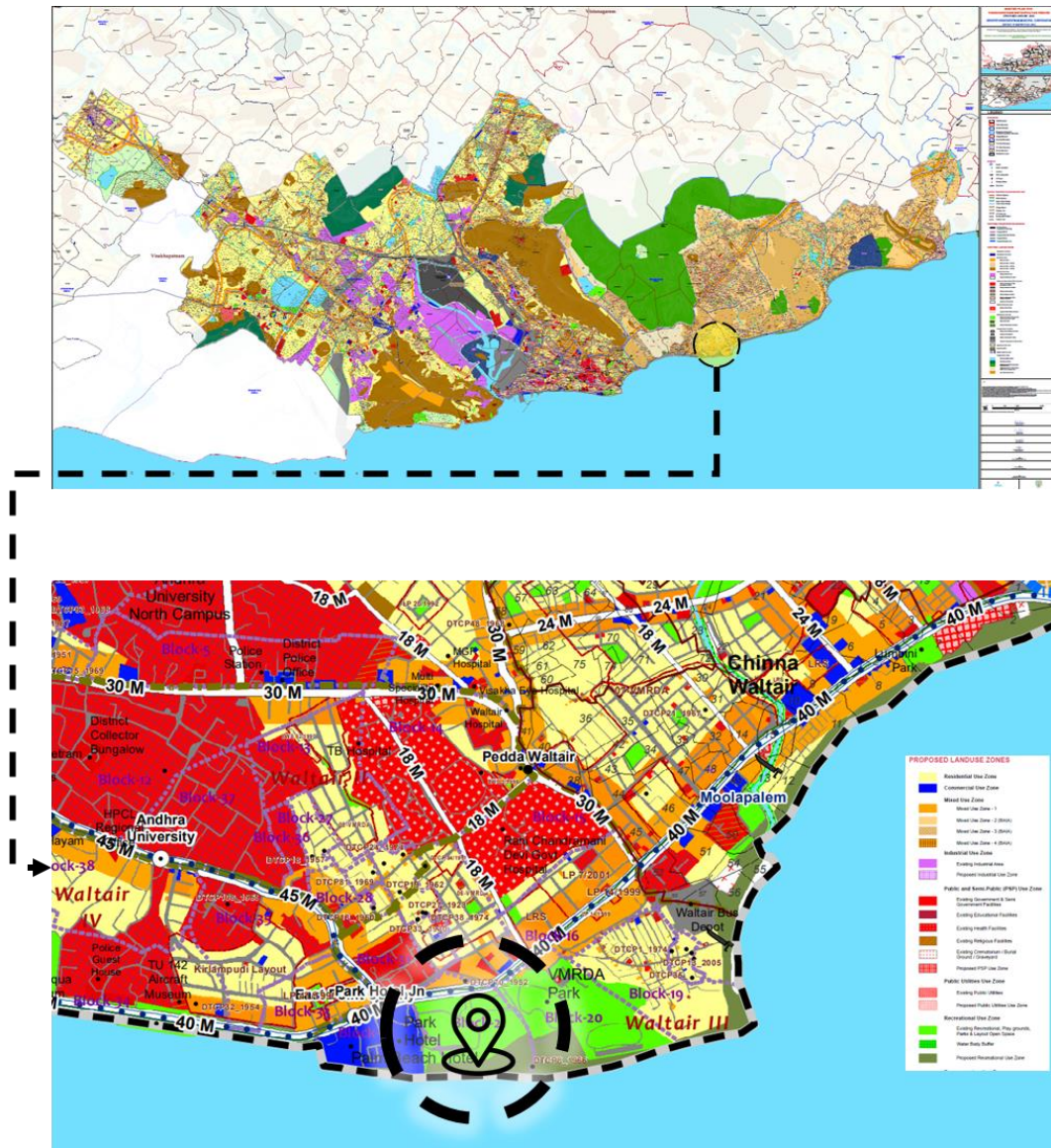


Source – APUIAML

5 LAND USE

The Project Site falls under Visakhapatnam Urban Mandal i.e., Part of Visakhapatnam Metropolitan Regional Development Authority (VMRDA). VMRDA Master plan 2041 is approved under by the Government Vide G.O. Ms No:136 Ma Dt. 08-11-2021. Holiday Resorts are permissible under the allowed activities of Proposed Recreation land use Zone. The type of Permissible Developments on the Site shall be limited to VMRDA Master Plan.

Figure 5-1 VMRDA Master Plan



6 CONCEPTUAL ZONING

The proposed land parcel of 7.97 acres identified for Development of Convention Centre with not less than 5 Star Hotel / Resort & Other Water Entertainment Facilities in Visakhapatnam. In Existing scenario, in the project area a Single structure, Helipad and a Swimming pool are present. Keeping in the view of requirement to improve MICE tourism

activities in city and tourist needs has been considered for a broad conceptual zoning of the components is done and given in the below figure.

Figure 6-1 Conceptual plan



Note: All the building approvals to be obtained as per the norms of local body

7 APPLICABLE DEVELOPMENT CONTROL & REGULATIONS

Preamble

The information provided in this part of RFP, is as per the applicable Laws, Rules and Regulations as applicable as on the date for development of the Project. Major regulations covered are as below:

➤ ANDHRA PRADESH BUILDING RULES – 2017 (G.O. MS. NO. 119, MA&UD, DT. 28.03.2017)

Government of Andhra Pradesh (GoAP) issued the common building rules vide G.O. Ms. No. 119, MA&UD, dt. 28.03.2017 those are applicable to all Urban Development Authority areas and Urban Local Bodies together with Gram Panchayat areas in the State covered in Master Plans / General Town Planning Schemes / Outline Development Plans and hence applicable to the proposed “**Development of Convention Centre with not less than 5 Star Hotel / Resort & Other Water Entertainment Facilities**” development at along Beach Road, Visakhapatnam.

As per section 3 (e) of the G.O., the total area of the site is 7.97 acres 32,253.45 sq.mtr) and the proposed construction area of the “**Convention Centre with not less than 5 Star Hotel / Resort & Other Water Entertainment Facilities**” project is above 20,000 sq.mtr., prior Environmental Clearance (EC) is required from State Environmental Impact Assessment Authority (SEIAA), Ministry of Environment and Forests, Government of

India as per the provisions laid under the EIA Notification S.O.1533, Dt.14.9.2006 and its amendments from time to time.

As per section 4 (Requirement of approach road/access road for building sites / plots), the proposed development falls under B2 category and hence approach road is applicable as per Go Ms.no 119.

As per section 5 The minimum setbacks and permissible height

Table 1 Minimum Setbacks and Permissible Height

S. No	Plot Size (in Sqm) Above – Up to	Parking provision	Height (in m) Permissible up to	Abutting Road Width					Minimum setbacks on remaining sides (in m)
				Up to 12 m	Above 12m & up to 18m	Above 18m & up to 24m	Above 24m & up to 30m	Above 30m	
1	2	3	4	5	6	7	8	9	10
1	Above 2500	Stilt + 2 or more cellars	7	3	4	5	6	7.5	5
			15	3	4	5	6	7.5	6
			18	3	4	5	6	7.5	7

The setbacks are to be left after leaving the affected area of the plot/ site, if any, for road widening.

- In case of plots above 750 Sq mtr, it is permitted to transfer up to 2 m of setback from any one side to any other side without exceeding overall permissible plinth area, subject to maintaining of a of a minimum 2.5m setback on other side and a minimum building line. The transfer of setback from front setback is not allowed.
- As per the provisions of the Andhra Pradesh Fire Service Act, 1999, Residential buildings of height more than 18 m, Commercial buildings of height 15m and above plot area of 500Sq.m. and above or of height above 6m are required to obtain prior clearance from Andhra Pradesh State Disasters Response & Fire Services Department from fire safety point of view. The Project will need to be planned considering the above setbacks requirements.

As per section 7, Prior No Objection Certificate (NOC) from the Andhra Pradesh State Disasters Response & Fire Services Department: For all High-Rise Buildings prior No objection Certificate (NOC) from the Andhra Pradesh State Disasters Response & Fire Services Department shall be obtained and copy of the approved plan and No Objection Certificate (NOC) issued by the said department shall be enclosed along with the building application.

Buildings abutting major road of 30 m and above width shall be permitted only after providing black topped service roads of minimum 7m width with minimum 2 Lane carriageway within the defined right of way. The minimum abutting road width and all-round open space / setback for High Rise Building / Complex shall be as follows:

Height of building (in meters)		Minimum abutting road width required (in meters)	Minimum all-round open space on remaining sides (in meters)
above	Up to		
1	2	3	4
-	21	12	7
21	24	12	8
24	27	18	9
27	30	18	10
30	35	24	11
35	40	24	12
40	45	24	13
45	50	30	14
50	55	30	16
After 55 m 0.5 m additional setback for every 5m of height shall be insisted			

As per section 13 (parking requirements), in all buildings provision shall be made for parking spaces as per the following requirements:

S. No	Category of building activity	Parking area to be provided as % to total built up area	
		All Municipal Corporations & UDA areas	All Municipal Municipalities Corporations s/ N. Ps/ G. Ps in UDA area
1	Multiplexes	60	50
2	Shopping malls (above 4000sq.m), information technology enabling services complexes	50	40
3	Boutique Hotels, restaurants, lodges, cinema halls, business buildings, other commercial buildings, Kalyana mandapams, offices, & Highrise buildings/ complexes of non-residential category	30	25
4	Residential apartment complexes, hospitals, institutional buildings, industrial buildings, schools, colleges, other educational buildings & godown & others	20	20

The project falls under Sl. No. 3 of the above table hence 30% of the total built up area is to be provided for parking. Hence, the Concessionaire will be required to plan the project according to the above requirements.

As per Section 15 specifies the compliance of national building code provisions for amenities and facilities in all buildings. Other sections of the G.O. detailed the city level infrastructure impact fee (section 21), technical approval from UDAs (section 23), occupancy certificate (section 26), etc.

As per Section 18 For certain areas as well as sites abutting major roads of 30m and above, the Competent Authority may enforce urban design and architectural control. These shall be detailed out keeping in view the development conditionalities and requirements given in these Regulations and the National Building Code norms. For this purpose, urban design and architectural control sheets / Plans approved by the Competent Authority shall be complied.

➤ **ANDHRA PRADESH TOURISM POLICY 2020-2025**

Government of Andhra Pradesh (GoAP) has announced the A.P. Tourism Policy 2020-2025. **The Permissible activities in the Project Site shall be subject to the same listed therein, irrespective of the permissible developments as per applicable land use.**

➤ **COSTAL REGULATION ZONE, CRZ 2011 & 2019**

Government of Andhra Pradesh is in the process of taking up necessary steps including but not limited to updating CRZ Maps, Tourism Plan, Coastal Zone Management Plan (CZMP) as per the CRZ Notification of 2019 and the same shall be applicable to the Project Site from the date of such notification. Further, in the current date, in the absence of the applicability of 2019 Notification, the 2011 Notification along with the amendments from time to time, shall be applicable.

8 SPECIFICATIONS AND STANDARDS

Preamble

In addition to the Development Controls and Regulations covered in the previous section, the **Specifications and Standards** as defined in the Concession Agreement cover the **Technical Specifications and Guidelines** for buildings as well as site development. It may be noted that the Concessionaire shall be responsible for preparing the entire Project Master Plan, using the Development Controls as outlined in Part I of this Section and any other regulations applicable to the project site.

The following specifications and standards cover only some of the minimum requirements for the development of project facilities. The Developer shall construct, operate, maintain, and manage the proposed facility strictly conforming to the relevant Indian Standards; the best industry practices acceptable norms as laid by Ministry of Tourism, GoI. Whether the requirements are explicitly stated or not in the RFP documents, the Bidders must note VMRDA envisages a decent facility in all respects and expects good quality and standards from the selected Developer, as the binding contractual obligation.

This part of the section covers the Technical Specifications and Maintenance and Performance Standards, and to be referred, as may be applicable. They comprise of:

- a. Site Development Related Specifications
- b. Operational Hours, Licenses & Permissions, Insurances
- c. Civil and Structural Requirements
- d. Services: Electrical, Water Supply, Plumbing, Drainage and Solid Waste Management
- e. Hotel Facilities: Reception, Room Size and Facility, Facilities for Differently Abled Guest, Lift and Escalators, Lounge and Seating area.
- f. Safety and Security, Fire Safety
- g. Other Standards related to access within the site, parking etc.

However, VMRDA would consider changes / deviations proposed by the Concessionaire, if any, if not having any material change, subject to the recommendations of the Independent Engineer.

8.1 Site Development Guidelines

- i. The developer shall provide & maintain landscaping and internal road/walkway network within the site.
- ii. The internal paving may be done using recycling waste/ eco-friendly materials that helps the environment.
- iii. The developer shall dismantle all the existing structures within the boundary of the site, adhering to the applicable safety standards and take up the necessary steps as specified in the Concession Agreement.
- iv. The developer is encouraged to adopt guidelines like GRIHA while designing / developing the project.

8.2 Convention Centre & 5 Star Hotel / Resort

8.2.1 A Convention Centre:

- a. Multi-purpose Convention Hall, air-conditioned Main Hall (with the ceiling of minimum 15 feet high; area to accommodate minimum 2500 persons in theatre-style seating)
- b. Multi-purpose hall shall have no fixed seating and shall be with partitions for flexibility in conducting multiple events simultaneously and it should be capable of hosting and catering to Meetings, Events, Exhibitions of National & International level.

8.2.2 Hotel / Resort of not less than 5-star category

- a. The Hotel / Resort should not be less than 200 guest rooms and the hotel / resort should Obtain not less than 5 Star category and comprise of all facilities and amenities that conforms with 5 star or any above star category as per Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India.

8.3 Other Waterfront Entertainment Facilities

The Water front Entertainment Facilities shall comprise of Shack Restaurant(s), Café(s) (with temporary structures / canopies, etc.), Party Lawns with landscaping / hardscaping (including Amphitheatre, etc) for outdoor events, Flea Market and an Exhibition Venue.

8.4 Operational Hours

The Project should be operational for Full time 7 days a week.

8.5 Licenses & Permissions

The Developer should obtain all required licenses such as Trade licenses permission/ FSSAI license/ Money Changer license and any other applicable license.

8.6 Insurances

The Developer should obtain the insurances including but not limited Public liability Insurance, Workers Compensation Insurance, any other applicable insurances.

8.7 Civil, Structural & Environmental Requirements

- i. The buildings shall be designed to resist wind and seismic forces. Enough safety precautions shall be ensured in erecting temporary/ non R.C.C. structures. RCC structures shall be designed as per IS 456: 2000.
- ii. Steel structures shall be designed in accordance with the provisions of IS 800:1984. Structural steel shall conform to IS 2062:2006. Tubular sections would conform to IS- 4923. Structural joints shall conform to IS 4000:1992.

- iii. Mitigation measures to be considered to reduce the negative impact on the ecology, available resources on site, soil erosion, existing vegetation and habitat, water and air pollution and waste handling as per the Manual on norms and standards for environment clearance of large construction projects.
- iv. Developer is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.
- v. All buildings shall be designed and constructed as earthquake and flood resistant structures.

8.8 Power Supply & Electrical Requirements

- i. Developer may explore more of non-conventional/renewable energy sources of power supply like Solar, wind etc. to match the theme of eco-friendly development.
- ii. The Developer shall ensure:
 - a. Un interrupted power supply to the Project Components.
 - b. Adequate earthing provisions for total protection of equipment's.
 - c. 100 % backup through requisite number of DG sets as stand-by.
- iii. The planning, design and execution of electrical installation, ventilation, air-conditioning, shall be carried out in accordance with Part VIII-Building Services (Section 2-Electric Installations, Section 3-Air Conditioning) of National Building Code of India prepared by BIS and as prevalent at the time of execution of the works, as the case may be.
- iv. The developer should install the pipes as per IS 2065 for Potable Water Supply and should be Operational 24/7 hours a day throughout the year and

8.9 Water Supply, Plumbing Requirements

- i. The planning, design, construction and installation of water supply distribution system, drainage and sanitation shall be in accordance with the Part IX (Section 1- Plumbing Services, Section 2- Plumbing and Sanitation, of NBC of India prepared by BIS and as prevalent at the time of execution of the work.
- ii. Water Supply design consideration for the building should be followed as Per IS 12183 :1987 or any other applicable standards.
- iii. Water Efficient plumbing products need to be installed.

8.10 Drainage and Solid Waste Management Requirements

- i. Solid Waste Collection and Disposal System should be implemented as per respective Municipal body guidelines.
- ii. The Project site shall be maintained as "Plastic Free Zone".
- iii. Ensure that no discharge or solid waste disposal is made in ground/ surrounding areas/ adjoining plots /opening areas or drainage.

8.11 Rainwater Harvesting

- i. Efforts shall be made for Water Conservation by implementing innovative practices such as Rainwater harvesting methods.
- ii. Rainwater harvesting shall be adopted as per the rules and regulations laid down by the statutory law applicable for the concerned area.

8.12 Lift / Escalators services

The lift / Escalators should be installed as per IS 4665 Part – 2 and should be operated 24/7.

8.13 Size of Rooms

The Developer should develop the size of the rooms according to HRACC guidelines star category/ Time saver Standards / NBC or any other applicable standards / guidelines.

8.14 Facilities in the Rooms

The Developer should Develop the each and individual facility in the Room as per the HRACC guidelines star category / Time Saver standards or any other applicable standards / guidelines.

8.15 Differently Abled Guest

The Developer shall provide necessary arrangements for disabled / physically challenged persons for accessing project facilities.

Room and Facilities for the Differently Abled Guest should be followed as per Harmonized Guidelines 2020 / NBC 2016/ HRACC guidelines or any other applicable guidelines.

8.16 Standby Diesel Generator Sets

Standby diesel generator sets to supply power to the Project facilities must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply.

8.17 Safety and Security services

To remain Operational 24-hour to control access to the site, appropriate fencing of the site with lighting shall be provided.

Metal Detectors, CCTV, X ray Machine, Belly Scanners for vehicles, Smoke detectors, Fire Emergency alarms, should be procured and maintained as per Beare of Indian standards (BIS) /Other applicable standards.

8.18 Fire Fighting Facilities

The Developer shall provide the required firefighting equipment and facilities including fire exits, fireproof doors, etc. conforming to the relevant BIS standards. The Project shall have a valid NOC / Certificate from the Fire Department.

8.19 Signages

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

1. Information Signs
2. Facility Signs, and
3. Other Signs

8.20 Parking Area

As per the demand, the developer shall provide parking facilities for the visitors of the proposed project. In that case the specifications to be followed are as below:

- a. Minimum carriageway within parking facilities for buses, cars, two wheelers shall be 4m if one way and 6 m if two way.
- b. All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/ lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.
- c. Parking shall be provided at the rate of 2.50 Equivalent Car Space (ECS) per 100 sq.m. built-up area. For the provision of Car Parking spaces, the space standards shall be as under:
 - i. For open parking – 25.0 sq.m. per equivalent car space
 - ii. For ground floor covered parking – 30.0 sq.m. per equivalent car space.
 - iii. For basement parking – 35.0 sq.m. per equivalent car space.

However, the above provision shall need to be in compliance with the local Authority.

- d. 24/7 Valet Parking services need to be operated.

8.21 Access Within the Site

- i. The main access to any component shall have adequate width not less than 18 m.
- ii. An unobstructed area of minimum width of 3 m. shall be provided around each built structure in the premise for Fire Tender movement. This shall be within the limit of the site and shall be paved with impervious material above a hard bed.

All the above are minimum requirements subject to the norms of fire services department.

8.22 Eco Friendly Guidelines

The Developer is encouraged to develop Eco Friendly Project and employ Green Building Principles to the extent possible with the objective of efficient resource utilization, energy conservation/savings and environmental protection.

8.23 Supporting Facilities and Amenities

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

8.24 Other Standards

- a. The developer shall take such measures and exercise to protect the Site during the course of the Works as directed by and to the entire satisfaction of the VMRDA.
- b. During the construction period, the developer shall make suitable arrangements to coordinate with VMRDA and provide all necessary information so as to allow the Department to monitor the progress and quality of construction as provided in the Concession Agreement.

9 MAINTENANCE AND PERFORMANCE STANDARDS

Preamble

The following maintenance and performance standards cover only some of the minimum requirements for operation. The Developer shall operate, maintain, and manage the proposed project facilities including allied facilities strictly conforming to the relevant Indian standards, the best industry practices, pollution free environmental standards and internationally acceptable norms.

9.1 General

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

- i. Perform maintenance on a routine and periodic basis.
- ii. Provide functional facilities that (a) have an environmentally acceptable atmosphere for users; (b) ensure the safety of the users; and, (c) maintain a good environment in the site conducive to run business in the proposed project site.
- iii. Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- iv. Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

9.2 Maintenance Works

- i. The Developer shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical, and electrical works, equipment, services and facilities.
- ii. Maintenance of all the electrical-mechanical equipment and machineries shall be as per 'Original Equipment Manufacturers' (OEM) standards.

9.3 Performance Standards: Intent

- i. The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- ii. The obligations of the developer/Operator in respect of Maintenance requirements shall include:
 - a. Maintaining site environment so as to cause minimum disturbance to the natural environment.
 - b. Ensuring that the facilities are operational and rectification of the defects and deficiencies within the minimum time.

- c. Ensuring that the fixed parameters provided in this RFP are abided by at any time during the Concession Period
- iii. Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency, or deterioration in the Project poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

9.4 Maintenance Performance Standards

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project in Table 2

Table 2 Periodic Maintenance/ Renewal Activities

S.No.	Periodic Renewal Activities	Time Limit for renewal
1	Repainting of furniture, signages delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in three years
3	Resurfacing of Pavement and internal roads	Routine repairs every year and premix carpet every fourth year. In case the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints.
4	Mechanical Equipment	As per manufacturer's installation, operation, and maintenance instruction manual
5	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation, and maintenance instruction manual
6	Fire Fighting System	As per manufacturer's installation, operation and maintenance instruction manual
7	Area Lighting	Periodic check-up and replacement as and when needed

Take necessary steps to have statutory inspections carried out at specified intervals and ensure that all required licenses/ permits for the operation of various services like water treatment plant, firefighting system etc. are valid at all times.

(Draft Version 2.3)

CONCESSION AGREEMENT

**DEVELOPMENT OF
CONVENTION CENTRE & 5 STAR CATEGORY
HOTEL / RESORT WITH OTHER WATERFRONT
ENTERTAINMENT FACILITIES**

**ON PRIME LAND ALONG BEACH ROAD AT
VISAKHAPATNAM, ANDHRA PRADESH, INDIA
ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS**

Volume IV: Draft Concession Agreement

December 2023

Tender Inviting Authority:



**Visakhapatnam Metropolitan Regional Development
Authority (VMRDA), Visakhapatnam**

Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003

Section-IV: Draft Concession Agreement

(This draft Concession Agreement will be entered into with the Concessionaire (upon incorporation as per the LoA Conditions) with the Preferred / Selected Bidder (as Confirming Party) in terms of RFP conditions (including Addenda, if any), once the Preferred Bidder is selected and meets the Pre-conditions of the Letter of Award. No clause of this Agreement shall be negotiated / altered after conclusion of the Bid Process)

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DRAFT CONCESSION AGREEMENT FOR
DEVELOPMENT OF CONVENTION CENTRE & 5 STAR CATEGORY
HOTEL / RESORT WITH OTHER WATERFRONT ENTERTAINMENT
FACILITIES ON PRIME LAND ALONG BEACH ROAD AT
VISAKHAPATNAM, ANDHRA PRADESH, INDIA ON PUBLIC PRIVATE
PARTNERSHIP (PPP) BASIS

THIS CONCESSION AGREEMENT (herein after also referred to as “**Agreement**”) is made on this the _____ day of _____ 2023 at Visakhapatnam, Andhra Pradesh.

By and Among

VISAKHAPATNAM METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY (VMRDA), having its Office at Siripuram Junction, Udyog Bhavan, Visakhapatnam, Andhra Pradesh 530003 and being represented herein by its Metropolitan Commissioner (authorized in this behalf) (hereinafter referred to as “**VMRDA**” or the “**Authority**” which expression shall, unless it be repugnant to the context or meaning thereof, include its subsidiaries, successors and assigns) of the **FIRST PART**;

AND

M/s _____, a company incorporated by the Preferred / Selected Bidder, exclusively for the Project, under the Companies Act, 2013, having its Registered Office at _____, Andhra Pradesh (hereinafter referred to as the “**Concessionaire**” which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) represented herein through Mr. _____, the Authorised Signatory, as authorized vide Board Resolution dated _____ or by Power of Attorney dated -----
- executed in his favor of the **SECOND PART**;

and

M/s _____ having its Registered Office at _____, in its capacity as the Confirming Party to this Agreement (hereinafter referred to as the “**Preferred Bidder**” or “**Selected Bidder**” which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through Mr. _____, the Authorised Signatory, as authorised vide Board Resolution dated _____ or by a Power of Attorney dated _____ executed in his favor of the **THIRD PART**;

(Each of the parties of the **FIRST, SECOND** and **THIRD** parts are hereinafter, as the context may admit or require, individually referred to as a “**Party**” and collectively as the “**Parties**”).

WHEREAS

- A. VMRDA is engaged in to regulate and control the development through statutory plans and other measures to achieve the sustainable development of the region, as a part of its development objectives. VMRDA intends to develop and improve the urban recreational activities for the growing urban population, including the floating population of tourists and visitors to Visakhapatnam. As a part of its endeavor to keep up with the city’s pace of development and time to time needs for requisite infrastructure, including urban recreational, VMRDA has identified certain strategic land assets owned by it, that it intends to develop, in to landmark developments. Under such context, it intends to develop an Convention Centre with allied facilities and Other Waterfront Entertainment Facilities.
- B. Accordingly, the VMRDA has earmarked a land admeasuring about **7.97 acres** (approx.) located along Beach Road, Visakhapatnam, Andhra Pradesh, India (the ‘**Project Site**’), has been identified for the development of a **Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities** on Public Private Partnership (PPP) basis, i.e., on Design, Finance, Build, Operate and Transfer basis (DFBOT) (hereinafter referred to as the “**Project**”).
- C. In view of selecting the private sector participant that would implement the said Project, VMRDA undertook a transparent competitive bidding process (the ‘**Bidding Process**’) for selecting the entity which would undertake the development of the Project and, accordingly, invited Request for Proposal (RFP) documents dated _____.
- D. After evaluation of the Bids received, VMRDA accepted the Bid of _____ with _____ as its Lead Member and issued the Letter of Award reference no. _____, dated _____, 2023 annexed hereto as **Appendix 1**(hereinafter the ‘**LOA**’), declaring it as the Preferred / Selected Bidder, in accordance with the terms of the RFP.
- E. Since then, the Preferred Bidder has incorporated the Concessionaire as its wholly owned subsidiary, exclusively to implement the Project, in accordance with the provisions of the RFP and requested VMRDA to accept the Concessionaire as the entity which shall enter into and undertake the Project and perform the obligations including the obligation to enter into this Concession Agreement for implementing the Project.
- F. VMRDA has, pursuant to the provisions of the RFP, agreed to grant the Concession for the implementation of the said project to the Special Purpose Company.
- G. The Concessionaire acknowledges and confirms that it has undertaken a due diligence exercise of all aspects of the Project including its technical and financial viability, legal due diligence, business risks, and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.
- H. Following the issuance of LOA, the Preferred Bidder in accordance with the terms and conditions as specified in the RFP Section- I, as being the pre-condition to the execution of this Agreement, has fulfilled all the conditions of the LOA and have made the non-

refundable, irrevocable payment of:

- i. Three months Advance Lease Rentals amounting to ₹ _____ (Rupees _____ Only) in the form of Demand Draft drawn in favour of **“Metropolitan Commissioner, VMRDA”**.
 - ii. The payment of Project Development Fees as prescribed in the RFP and the Letter of Award dated _____.
 - iii. The Preferred Bidder (for and on behalf of the Concessionaire) has also furnished an irrevocable and unconditional Bank Guarantee dated _____ drawn from..... Bank, _____ Branch, in favor of VMRDA for an amount of ₹6,00,00,000 (Indian Rupees Six Crore Only) valid up to _____, 2027, and encashable at _____ Branch, Visakhapatnam, as guarantee for the performance by the Concessionaire of its obligations in relation to the Project implementation / Construction Period (**“Performance Security”**).
- I. In light of the compliance by the Concessionaire of the pre-conditions set forth in the LOA for execution of the Concession Agreement, VMRDA has agreed to enter into this Concession Agreement vesting the rights for the implementation of the Project with the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.
- J. The Preferred / Selected Bidder has undertaken to ensure that the Concessionaire shall duly discharge its obligations under this Agreement and implement the Project and has joined in and is executing this Agreement as a Confirming Party to the arrangement envisaged and detailed herein under and agrees to undertake and comply with the terms and conditions hereof as binding terms.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions

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

- (a) **“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the signing of Concession Agreement to the immediately following, 31st March. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date.
- (b) **“Additional Development Premium”** or **“ADP”** means the % (per cent) of Annual Gross Revenue of the Project or Minimum Annual Assured Amount for each year (that the Preferred Bidder has quoted in its Bid), whichever is higher, which shall be payable by the Concessionaire to the Authority, each year commencing from the 1st year of operations, i.e., 4th year from the date of signing of the Concession Agreement, and shall be payable up to the expiry of the Concession Period or early termination. Applicable taxes, including the GST on the ADP shall be paid extra (over and above the quoted ADP) by the Concessionaire. The ADP shall be payable in advance on a quarterly basis, as per Appendix 16 of this Agreement.
- (c) **“Affiliate”** or **“Associate”** means with respect to a specified Person, any Person which is a holding company or subsidiary of such specified Person, or any Person which directly or indirectly, (i) owns or controls such specified Person, (ii) is owned or controlled by such specified Person, or (iii) is owned or controlled by the same Person, who, directly or indirectly, owns or controls such specified Person. For the purposes of this Agreement, the terms "holding company" and "subsidiary" shall have the meaning ascribed to them under Section 2 of the Companies Act, 2013 and the term "control" shall mean:
- i. Control over the composition of majority of board of directors of a company; or
 - ii. Control of more than 50% (fifty percent) of the issued equity share capital of a company
 - iii. and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise
- (d) **“Agreement”** means this Agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;
- (e) **“Appendix”** means any of the schedules, supplements or documents, appended to this Agreement;
- (f) **“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy,

requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of GOI, GOAP or by any Government Authority or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof;

- (g) **“Applicable Permits”** means any or all permissions, clearances, Concessions, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement (not limited to that attached hereto as Appendix- 9);
- (h) **“Annual Lease Rental”** means the annual lease rental payable by the Concessionaire to VMRDA for the Project Site in accordance with the provisions hereof and the Project Site Lease Deed, as per the Schedule 2 of Appendix 8 of this Agreement.
- (i) **“Annual Gross Revenues”** or **“Gross Annual Turnover”** or **“Gross Revenue”** means all pre-tax gross revenues earned by the Concessionaire and/or its Licensees / Sub-Licensees (wherever permitted) / Operator(s) / O&M Contractor(s) / Tenants or the Concessionaire through any other joint development / management model from the Project / Project Facilities under or pursuant to the Concession Agreement, at any time from COD up to the Transfer Date and shall include Fee, User Charges and any monies received from the Project / Project Facilities and the Site including but not limited to all revenues from all sources or amounts of money and the total receipts of business of the Concessionaire for any period, that arise, accrue to and/or are received (or which would have been received) from the operation of Project / Project Facilities, including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to – (i) the license/sub-license of built up space of the Project / Project Facilities (ii) exploitation in any manner whatsoever of the Project / Project Facilities by any Person, including but not limited to capital receipts, upfront license payments, non-refundable deposits, advances, registration payments, installments received from licenses, sub-license charges, fees, tariff, parking charges, profits on maintenance charges, profits on service charges, etc; (iii) revenues from guests, visitors, persons utilizing the facilities, monies received from User, any other person(s), etc., which shall also include booking amounts, sales proceeds, advances, earnest monies, parking, room rent, food bills, events, etc., including interest earned on refundable deposits, but shall exclude the following:
- (i) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against;
 - (ii) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, viz: GST, Cess, Taxes, etc., as an authorized agent of such Government Instrumentality;
 - (iii) any deposit or fee received by the Concessionaire from Licensees at any time during the Concession Period.

It is expressly clarified that:

- a. insurance proceeds referred to in exclusion (i) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption;
- b. monies referred to in exclusion (ii) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded; and

in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Project / Project Facilities Revenues, the decision of the Authority, at its sole discretion, shall be final and binding on the Concessionaire;

- (j) **“Concession Period”** shall have the meaning specified in Section 2.2;
- (k) **“Concessionaire”** means M/s (_____) and shall include its successors and permitted assignees;
- (l) **“Concession”** shall have the meaning set forth in Article 2.1;
- (m) **“Bank”** means any Nationalized/Scheduled (excluding Cooperative) Banks having operations in Visakhapatnam, Andhra Pradesh.
- (n) **“Built up Area”** or **“Floor Area,”** or **“Built up Space”** means the covered area of a building at all floors levels added together, excluding parking.
- (o) **“Business Day”** means a day on which banks are generally open in Visakhapatnam for transaction of normal banking business;
- (p) **“Commercial Operations”** means the occupancy and use by third parties/ users / customers of the relevant Project Facility, pursuant to Contractual Arrangements with the Concessionaire and/or against payment of User Charges;
- (q) **“Commercial Operation Date”** or **“COD”** means the date on which the Authority issues the Provisional Certificate and / or the Completion Certificate, as the case may be, in respect of the entire Project or any particular Project Facility (as per MDOs), upon receipt of which, the Concessionaire commences Commercial Operations of the respective Project Facility in accordance with the provisions hereof.;
- (r) **“Completion Certificate”** means the certificate issued by Authority in the manner set out in Section 6.3;
- (s) **“Compliance Date”** shall mean the later of the dates, within a period of one hundred and eighty (180) days from the Execution Date, by which both the Parties hereto have fulfilled their respective Conditions Precedent in accordance with Article 3 hereof, and upon which this Agreement becomes unconditional and effective;
- (t) **“Condition Precedent”** means the conditions set out in Article 3 hereof;

- (u) ‘**Consortium**’ shall mean the group of legally constituted entities, who have come together, have- agreed or have formed an understanding (in writing) for implementing the Project, subject to the terms of this RFP.
- (v) “**Construction Contract**” means the one or more contracts that are entered into by the Concessionaire with the relevant Contractors in relation to the construction of the Project Facilities
- (w) “**Construction Period**” means the period from the date of execution of this Agreement up to the date of Project Completion (i.e. when the Completion Certificate has been issued for all the Project Facilities); However, for the purpose of deciding the term of this Agreement, Construction Period shall be deemed as 03(three) years from the date of this Agreement, irrespective of the actual time taken for construction and completion of the Project.
- (x) “**Contractor**” means a reputed Person with whom the Concessionaire has entered into/ may enter into a contract relating to the Works and subcontractors, including contractors for engineering, procurement and construction of all or any part of the Project Facilities and contractors for operations, management, and maintenance (‘O&M Contractors’), as the context may require, service providers, suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context may admit or require;
- (y) “**Contractual Arrangements**” shall mean and include all and any, licensing, tenancy, franchising and similar arrangements that may be entered into by the Concessionaire, in accordance with and subject always to the terms and conditions of this Concession Agreement, with such Persons selected by it for enabling such Persons to occupy or use or market the whole or part of the Project Facilities including built-up floor areas/spaces, advertising spaces, car parking, open areas and infrastructure facilities. Provided that the Concessionaire cannot sell or hypothecate the title of the Site or the Project Facilities or transfer this Concession Agreement.
- (z) “**Contractual Counter-Parties**” shall have the meaning specified in Section 6.5.2;
- (aa) “**Debt Service**” means all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Documents;
- (bb) “**Demand Draft or DD**” or “**Pay Order**” means the instrument issued by any Nationalized/Scheduled (Excluding Cooperative) Banks having operations in Visakhapatnam, Andhra Pradesh.
- (cc) “**Detailed Project Report**” or “**DPR**” means the detailed design, engineering and financial business model report for the Project, as indicated in the Article-6
- (dd) “**Depreciated Historic Cost**” or “**DHC**” means the depreciated historic cost as computed in accordance with Appendix 12
- (ee) “**Designs and Drawings**” means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the Project

Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Concessionaire from time to time for approval in accordance with the provisions of this Agreement;

- (ff) “**Development Controls**” means the Applicable Laws, guidelines and controls for development and implementation of the Project Facilities set forth in Appendix-4;
- (gg) “**Directive**” means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified/directive issued by the VMRDA to the Concessionaire and any modification, extension or replacement thereof from time to time in force.
- (hh) “**Dispute Resolution Procedure**” means the procedure for resolution of disputes set forth in Article 17;
- (ii) “**Easement**” means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real estate property or Project Site, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project;
- (jj) “**Encumbrances**” means any encumbrance such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Project Site or Third-Party claims or rights of any kind attaching to the whole or any part of the Project Site;
- (kk) “**Event of Default**” means a Concessionaire Event of Default or an Authority Event of Default or both, as the context may require or admit;
- (ll) “**Expert**” means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent, also referred to as third party expert;
- (mm) “**Execution Date**” or “**Date of Execution**” means the date on which this Concession Agreement is signed by the Parties.
- (nn) “**Escrow Account**” means the bank account in the Escrow Bank into which all the revenue inflows and outflows of the Concessionaire that accrue or arise under, in connection with or pursuant to the Project (including amounts received from User Charges) shall be credited and debited, as the case may be, in accordance with the provisions hereof and of the Escrow Agreement and shall include the sub-accounts of such account;
- (oo) “**Escrow Agreement**” means the agreement to be entered into by and among the Authority, the Concessionaire the Lenders/Lenders’ representative, and the Escrow Bank, in relation to the opening and operation of the Escrow Account;
- (pp) “**Escrow Bank**” means the bank, mutually agreed upon by the Authority, the Concessionaire and the Lenders/Lenders’ representative, for the purpose of opening the Escrow Account;

- (qq) “**Financial Assistance**” means the aggregate amounts provided by way of loan, advances, guarantees or otherwise by the Lenders to the Concessionaire for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds under the Financing Documents relating to the Project;
- (rr) “**Financial Closure**” means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and the Concessionaire has access to such Financial Assistance;
- (ss) “**Financing Documents**” means, collectively, the documents executed in favor of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance, including loan agreements, all the security documents (such as mortgage deed, hypothecation deed etc.) that create security in respect of the Financial Assistance, notes, indentures, or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof, relating to or securing the repayment of the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Concessionaire for the Project;
- (tt) “**Force Majeure Event**” shall have the meaning ascribed to it in Section 14.1 of this Agreement;
- (uu) “**GoAP**” means Government of Andhra Pradesh
- (vv) “**GoI**” means the Government of India;
- (ww) “**Government Authority**” means GoI, GoAP or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Concessionaire under or pursuant to this Agreement or any portion thereof;
- (xx) “**Good Industry Practice**” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a project of the type and size similar to the Project;
- (yy) “**Independent Engineer/Consultant**” means the Independent Engineer/Consultant that may be appointed as referred to in Section 7.1. It is hereby clarified that wherever in this Agreement any certification or verification has been stated to be needed or undertaken by the Independent Engineer, the same shall be done or undertaken by the Nodal Officer in the event no Independent Engineer has been appointed under Article 7.1;
- (zz) “**Land Lease Deed**” means the lease deed to be executed between the Authority and the Concessionaire, substantially in the form set out in Appendix-8, pursuant to which the Authority shall lease to the Concessionaire the land comprising the Project Site,

vesting the Concessionaire with Vacant Possession and all rights relating thereto for a period co-terminus with the Concession Period;

- (aaa) “**Lenders**” means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes financial institutions, banks, non-banking financial companies, funds, trusts who provide for Financial Assistance (including refinancing) to the Concessionaire and includes subscribers to/trustee for the holders of the debentures/bonds or other securities issued by the Concessionaire to meet the debt component of the cost of the Project and whose identity has been notified to Authority by the Concessionaire from time to time. It is clarified that “Lenders” for the purposes of this Agreement, shall not include promoter entity or Affiliates of the Preferred Bidder or the Concessionaire;
- (bbb) “**Material Adverse Effect**” means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;
- (ccc) “**Material Breach**” means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement or/ has a Material Adverse Effect.
- (ddd) ‘**Minimum Development Obligations**’ or ‘**MDOs**’ shall mean all the Project Facilities including other obligations as detailed in Appendix 3.
- (eee) “**Nodal Officer**” means the officer of VMRDA, who has been nominated as the “nodal officer” under Section 7.1 of this Agreement.
- (fff) “**Operations Period**” means, in relation to a particular Project Facilities, the period commencing from COD of the relevant Project Facility and ending on the expiry or prior termination of the Concession Period and in relation to the Project means the period commencing from issuance of the Completion Certificate in relation to all the Project Facilities and ending on the expiry or prior termination of the Concession Period;
- (ggg) “**Person**” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity
- (hhh) “**Performance Security**” shall mean the irrevocable and unconditional first demand bank guarantee of an amount equivalent to ₹6,00,00,000/- (Rupees Six Crore Only) provided by the Preferred Bidder/ Concessionaire from a Nationalized /Scheduled (Excluding Cooperative) Bank in favor of VMRDA / Metropolitan Commissioner, VMRDA in the form, manner and content, more particularly specified under Clause 9.1 hereto., as a security for the performance of its obligations by the Concessionaire, in respect of the Project during the implementation / Construction Period.
- (iii) “**Performance Standards**” or “**Maintenance and Performance Standards**” means

- the performance parameters for the operation and maintenance of the Project set out in Appendix 4;
- (jjj) “**Preferred Bidder**” shall mean the entity defined as such in the Name Clause of this Agreement.
- (kkk) “**Prohibited Activities**” means the activities not permitted, as specified in Appendix 17 of this Agreement.
- (lll) “**Project**” means, subject to the provisions of this Agreement, the (i) designing, financing, construction, implementation, completion, commissioning, marketing, operation, management, maintenance and transfer of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (ii) the determining, demanding, charging, collecting, retaining and appropriating and revision of User Charges by the Concessionaire in relation to the Project Facilities and (iii) the transfer of the Project Facilities by the Concessionaire to the Authority or its nominated agency at the end of the Concession Period by efflux of time or prior termination
- (mmm) “**Project Assets**” shall mean and comprise of all tangible and intangible assets relating respectively to the Project, as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise; (b) each of tangible assets comprising the Project Facilities such as foundation, buildings, substructures and superstructures, pavements, open areas / lawns, works, drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Contracts and other agreement relating to the Project entered into by the Concessionaire and (e) proceeds from insurance policies taken by the Concessionaire in relation to the Project Facilities.
- (nnn) “**Project Completion**” shall have the meaning specified in Section 6.3 (a);
- (ooo) “**Project Contracts**” means collectively this Agreement, the Land Lease Deed, the Construction Contract, O&M Contracts (if any), Rental / License / Sub-License Agreements, if any, and any other material contract (other than the Financing Documents) entered in to or may hereafter be entered into by the Concessionaire in connection with the Project.
- (ppp) “**Project Facilities**” means collectively all the amenities and facilities proposed/developed in the Project Site as per the MDOs that the Concessionaire is authorised to undertake and develop, operate and maintain on the Project Site (Appendix-4). “Project Facility” can refer to any one of them, as the context may require;
- (qqq) “**Project Implementation Schedule**” means implementation schedule for the Project to be finalized as part of the DPR in accordance with Section 6.1(b) of this Agreement;
- (rrr) “**Project Site**” or “**Site**” means all that plot of land containing an area, approximately admeasuring 7.97 acres, situated (approx.) of land along Beach Road at Visakhapatnam, Andhra Pradesh, in Visakhapatnam district of Andhra Pradesh more

- particularly detailed in Appendix-6;
- (sss) **“Proposal”** or **“Bid”** means the entire set of technical, financial, qualifying and other documents that comprise the proposal submitted by the Preferred Bidder in response to the RFP;
- (ttt) **“Request for Proposal”** or **“RFP”** means the Request for Proposal dated ____, 2023 issued by the Authority as part of the competitive bidding process inviting bids for implementing the Project on PPP basis, and includes any addendum / clarifications issued in respect thereof by the Authority;
- (uuu) **“Revenue Share”** shall mean the share of the gross revenues of the Project (excluding taxes collected and deposited to the Government authorities), and payable as Additional Development Premium by the Concessionaire to the Authority every year in consideration of the grant of the Project, and commencing from the 1st year of operations i.e., 4th year from the date of signing of the Concession Agreement, and shall be payable up to the expiry of the concession period or early termination in accordance with the provisions of Section 8.3.2 of this Agreement.
- (vvv) **“Scheduled Project Completion Date”** shall have the meaning specified in Section 6.3 (c);
- (www) **“Security Interest”** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;
- (xxx) **“Specifications and Standards”** means collectively or singularly, as the context may admit or require, the Development Controls, the Technical Specifications and the Performance Standards;
- (yyy) **“Special Purpose Company”** or **“SPC”** shall mean the Concessionaire.
- (zzz) **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, State, provincial, local governmental or municipal impositions including property tax, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by GoI, the Authority or Government Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;
- (aaaa) **“User Charges”** or **“User Fees”** shall mean and include the rentals, room rentals, Convention Hall Rentals, Event Revenues, revenues from Restaurants / sale of food, license fees, deposits, advances, prices, fees, charges, user charges, tickets, charges relating to facility management services, maintenance charges, advertisement fees, and

- all other amounts of money by whatever name called including entry fees, parking charges, tickets, any payment made a user of the Project Facilities, including restaurants, food court, event fees / event entry charges, room rent, sales proceeds, etc, that are (i) determined, charged, demanded, collected, retained and appropriated by the Concessionaire or its licensee / sub-licensee / tenant from the Project under this Agreement, including pursuant to any Contractual Arrangement in relation to the use of space within the Project Site, as well as maintenance and upkeep of Project Facilities; and/or (ii) payable at any time and from time to time by any Person to the Concessionaire in respect of any or all of the Project Facilities;
- (bbbb) **“Technical Specifications”** or **“Specifications & Standards”** mean the technical specifications for the construction and implementation of the Project as set forth in Appendix 4;
- (cccc) **“Termination”** means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;
- (dddd) **“Termination Period”** shall have the meaning specified in Section 16.1;
- (eeee) **“Tests”** means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the Construction Works and certification thereof by the Authority/Independent Engineer/Consultant prior to Commercial Operations;
- (ffff) **“Third Party”** means any Person, real or legal, or entity other than the Parties to this Agreement;
- (gggg) **“Transfer Date”** means either: (i) the date of expiry of Concession Period by efflux of time, including extension thereto or (b) in the event of an earlier termination thereof, the date on which the Project Facilities are transferred to the Concessionaire in accordance with the provisions of Article 16;
- (hhhh) **“Transaction Documents”** means collectively the Project Contracts and the Financing Documents but does not include the Escrow Agreement;
- (iiii) **“Vacant Possession”** means delivery of possession of the land comprising the Site, free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto;
- (jjjj) **“Vesting Certificate”** shall have the meaning specified in Section 16.5;
- (kkkk) **“Year”** means a period of 12 consecutive calendar months;
- (llll) **“Works”** mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project Facilities (the “Construction Works”), and the operation, management and maintenance, rectifying and remedying of defects therein (the “O&M Works”), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested,

commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder.

Section 1.2 Interpretations

In this Agreement, unless the context otherwise requires,

- a. Reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- b. Words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender;
- c. The table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- d. Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Appendices and used therein shall have the meaning ascribed thereto in the Appendices;
- e. Words “include” and “including” are to be construed without limitation;
- f. Any reference to any point in time shall mean a reference to that point according to Indian Standard Time;
- g. Any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- h. Appendices 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;
- i. Reference to this Agreement or any other agreement, deed, instrument, Concession or document of any description shall be construed as reference to such agreement, deed, instrument, Concession or other document as the same may from time to time be amended, varied, supplemented, modified, notated or suspended;
- j. References to recitals, articles, sections, sub-sections, appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sections, sub-sections, appendices of or to this Agreement;
- k. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business day, then the period shall run until the end of the next Business day;
- l. References to any date, period or Milestone Dates shall mean and include such date, period or Milestone Date as may be extended pursuant to this Agreement or by mutual consent of the Parties hereto;
- m. References to “construction” include, unless the context otherwise requires, investigation, design, development of Site, engineering, procurement, delivery,

transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” shall be construed accordingly;

- n. Wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, Concession proposal, communication, information or report or determination by any Party and/or the Independent Engineer/Consultant/Consultant/ Expert, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, Concession proposal, communication, information or report or determination shall be in writing under the hand of the duly authorized representative of such Party and/or the Independent Engineer/Consultant/Consultant/Expert in this behalf;
- o. Unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- p. Any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
- q. The damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

Section 1.3 Measurements and Arithmetic Conventions

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

Section 1.4 Ambiguities within Agreement

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

- a. Between two Articles of this Agreement, the provisions of specific Article relevant to the issue under consideration shall prevail over those in the other Article;
- b. Between the provisions of this Agreement and the Appendices, the Agreement shall prevail, save and except as expressly provided in the Agreement or the Appendices;
- c. Between the written description on the drawings and detailed engineering and the Specifications and Standards, the latter shall prevail; and
- d. Between any value written in numerical and that in words, the latter shall prevail.

Section 1.5 Priority of Documents

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

- a. This Agreement

- b. The Appendices to the Agreement
- c. Any Supplementary Agreements to this Agreement
- d. The LOA issued to the Preferred Bidder
- e. Written addenda to the RFP
- f. Written clarifications to the RFP
- g. The RFP
- h. The Preferred Bidder's Bid

ARTICLE 2 CONCESSION

Section 2.1 Grant of Concession

- a. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws, the terms of Applicable Permits, and Good Industry Practice, the Authority hereby grants to the Concessionaire, and the Concessionaire hereby accepts the exclusive right, authority and authorization to undertake, during the Concession Period, the development, design, engineering, financing, procurement, completion, commissioning, implementation, marketing, management, administration operation and maintenance of the Project Facilities at the Site and exercise and enjoy the rights, powers, privileges, Concessions and entitlements as set forth in this Agreement (collectively the “**Concession**”) and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- b. Subject to and in accordance with the provisions of this Agreement, the Concession granted herein includes, subject to the provisions hereof, shall oblige or entitle (as the case may be) the Concessionaire to:
 - i. Make at its cost and expense such development and improvements in the Site as may be necessary to implement the Project and establish the Project Facilities there at subject to and in accordance with the provisions of this Agreement;
 - ii. Develop, finance, design, construct, market, manage, administer, operate and maintain the Project Facilities in conformity with the Specifications and Standards set forth in Appendix-4;
 - iii. To apply for, procure & maintain all requisite Applicable Permits for the development of Project Facilities on the Project Site as well as for the O&M thereof, including plans for construction thereon for such uses and purposes as permitted under this Agreement; and
 - iv. Operate and maintain the Project and regulate the use thereof by Third Parties in accordance with the provisions of this Agreement and Applicable Laws
 - v. Determine, demand, revise, charge, collect, retain and appropriate User Charges;
 - vi. Enter into Contractual Arrangements in relation to the Project Facilities
 - vii. Appoint Contractors/sub-contractors for discharging any of its obligations under this Agreement, carrying on its business of implementing, constructing, managing, marketing, operating and/or maintaining the Project, subject to the conditions of this Agreement being co-terminus to terms of this Agreement, including but not limited to the payment of the ADP;
 - viii. Exercise all rights and remedies available under the Applicable Laws to recover the User Charges in compliance with the requirements of the Applicable Laws, terms of Applicable Permits or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf; and
 - ix. Make timely payments to the Authority in accordance with the terms of this Agreement towards, interalia, Additional Development Premium in the form of Revenue Share and the Annual Lease Rental;
 - x. Perform and fulfill all of the Concessionaire’s obligations under and in accordance

with this Agreement, Carry out such other activities incidental to the foregoing or proper or desirable for the safe, efficient and economic implementation and operations of the Project, in accordance with Applicable Laws & Good Industry Practice

- c. The Concessionaire has no right to sell or mortgage/ hypothecate the title of the Site or any of the whole or part thereof and it shall, on the Transfer date, transfer and hand over the Site along with the Project Facilities and Project Assets to the Authority or its nominated agency in accordance with the provisions hereof.
- d. The Concessionaire is not authorised and shall not assign, transfer or sublet or part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, or to enter into Contractual Arrangements including with licensees for operations or licensing / leasing built up areas of the Project / Project Facilities to vendors for operations of Hotel, food outlets, shack restaurants, or any particular outlets or Project Facilities permitted in this Concession Agreement. For the avoidance of doubt, the terms of any such agreements shall be co-terminus to the terms of this Concession Agreement, including but not limited to the Additional Development Premium as well as the Concession Period.

Section 2.2 Concession Period

The period of Concession shall commence on the Execution Date of this agreement and shall if not terminated earlier or extended by VMRDA in accordance with the terms and conditions hereof, remain valid for a period of 33 (thirty-three) years from such date, excluding construction period of 03 (three) years, extendable, with Right of First Refusal (RoFR) and as per terms and conditions prevailing at that point of time, during which the Concessionaire is authorized to implement the Project in accordance with the provisions of this Agreement (the “**Concession Period**”). For the avoidance of doubt, the Construction Period shall not be extended and shall be a maximum of 03 (three) years. Further, even in case the Project does not achieve COD by the end of 03 (three) years, the Minimum Annual Development Premium amount shall commence to be due for payment to the Authority from the beginning of the 4th (fourth) year from the date of signing of the Concession Agreement .

ARTICLE 3 CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent relating to the other Party (the “Conditions Precedent”).

Section 3.2 Conditions Precedent for Authority

The obligations of the Concessionaire hereunder are subject to the satisfaction in full of the following Conditions Precedent for the Authority: The Authority shall have:

- a. Carried out joint inventory of the Site, including but not limited to movable / immovable items / buildings and trees at the Site, after vacating / clearing away any movable / immovable items from the Site, as it may decide at its discretion;
- b. Handed over to the Concessionaire, the Possession of the Site including the immovable items / buildings, free from all encumbrances, on “as is where is basis” and executed Land Lease Deed substantially in the form attached hereto in Appendix-8 in accordance with the terms of this Agreement;

Section 3.3 Conditions Precedent for Concessionaire

The rights of the Concessionaire as per this Concession Agreement are subject to the satisfaction in full of the following Conditions Precedent for the Concessionaire. The Concessionaire shall have:

- a. Within 90 days of the date of Execution of this Agreement, registered this Agreement with the A.P. Registration and Stamps Department, at its own cost, including by payment of applicable Stamp Duty, Registration Charges and other applicable charges, etc. and provided the Authority notarized true copy of the same.
- b. Made all the applications at its cost and procured the Applicable Permits as per the indicative list set out in Appendix-9 required for commencing construction and execution of the Works unconditionally or if subject to conditions, then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;
- c. Provided the Authority notarised true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- d. Executed and procured execution of the Escrow Agreement
- e. Achieved Financial Closure and provided notarised true copies of the Financing Documents to the Authority along with soft copies;
- f. Prepared, finalised and procured approval of the Authority for the Detailed Project Report in accordance with the provisions of Section 6.1 hereof;
- g. Procured consent for establishment /consent for operation/ environmental clearance etc,

as applicable, from the State/Central Agencies/Authorities, as may be required under Applicable Law, after having completed preparation of the Detailed Project Report as required

- h. Confirmed in writing that all the representations and warranties of the Preferred Bidder/Concessionaire set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date Provided that upon request in writing by the Concessionaire, the Authority may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section

Section 3.4 Obligation to Satisfy Conditions Precedent

- a. Each Party shall make all reasonable endeavours at its respective cost and expense to comply in full with the Conditions Precedent relating to it within a period of 180 (one hundred and eighty) days from the Execution date, or any extension agreed to between the Parties.
- b. The later of the dates within such 180 (one hundred and eighty) days when the Authority and the Concessionaire fulfil their respective Conditions Precedent (unless Authority waives the same for the Concessionaire) shall be the date from which the obligations of the Parties hereunder shall commence (the “**Compliance Date**”).

Section 3.5 Non-fulfilment of Conditions Precedent

- a. In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- b. In the event that possession of the Site has been delivered to the Concessionaire prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement pursuant to clause 3.5 (a) above, the Site shall immediately revert to the Authority, free and clear from any Encumbrances and along with all Easementary Rights, irrespective of any outstanding mutual claims between the Parties and the Concessionaire and the Persons, claiming through or under it, shall immediately remove itself from the Project Site, without any demur or delay.
- c. In the event this Agreement is terminated due to non-fulfilment of the Concessionaire’s Conditions Precedent and the same is not due to Authority’s default or Force Majeure event, Authority shall retain the Project Development Fee, Three months Advance Lease Rentals and forfeit Performance Security as damages.
- d. In the event this Agreement is terminated due to non-fulfilment of the Authority’s Conditions Precedent, the Authority shall upon such termination return/refund in full the Performance Security along with three Months Advance Lease Rentals received from the Concessionaire, without any interest, provided there are no outstanding claims of the Authority on the Concessionaire, unless such Authority’s failure to fulfil its Conditions Precedent is a result of the Concessionaire’s default. For the avoidance of

doubt, the Project Development Fee shall not be refundable.

- e. Without prejudice to the foregoing, the Parties may, instead of terminating the Agreement, extend the time for fulfilling the Conditions Precedent by mutual agreement.
- f. In case of any delays in obtaining the Applicable Permits or approvals for construction and execution of the Project due and attributable to the concerned Government Authority and provided such delay is not due to any default or negligence or omission on the part of the Concessionaire or Persons claiming through or under it, there may be a commensurate extension of the Conditions Precedent, as certified by the Independent Engineer/Consultant and as approved by the Authority.

ARTICLE 4 PROJECT SITE

Section 4.1 Access to and Lease of Site

- a. The Authority shall on the date of execution of this Agreement, grant the Concessionaire with the access to the Site for the period from the date hereof to the Compliance Date for the limited purpose of carrying out site investigations, surveys, inspections etc at the Concessionaire's cost, risk and consequence. The Authority or any Government Authority shall have no liability whatsoever in this behalf. For the avoidance of doubt, the rights granted herein are only in the nature of a bare authorisation for the limited purpose of inspection and investigation of the Project Site. The Concessionaire shall ensure at its cost and consequence that during such period no damage is caused to the Project Site by its activities thereat.
- b. The Parties shall, within 7 (seven) days of the Authority's notice in this behalf to the Concessionaire, prior to the date of signing of Concession Agreement along with Land Lease Deed, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings, movable items, trees, and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Concessionaire in such joint inspection shall be mandatory. The Concessionaire shall carry out at its cost a due diligence of all encumbrances at, on or under the Site and notify the same to the Authority, which shall take prompt action for removing the same.
- c. The Authority shall bear all the costs of making available the Project Site to the Concessionaire and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Site, if any, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Concessionaire shall not be liable in this behalf.
- d. The Authority shall lease the Site to the Concessionaire on an "as is where is basis" under a valid and binding Land Lease Deed, in the form attached hereto as Appendix 8, for a period that shall be co-terminus with the Concession Period.
- e. The Authority shall on or before the Compliance Date and, upon satisfaction of the Conditions Precedents detailed in Section 3.3 hereof, handover the vacant possession of the Project Site unto the Concessionaire on an "as is where is basis" and together with the full and free right and liberty of way and passage and other rights in relation thereto, for the purpose of implementing the Project in accordance with the provisions of this Agreement.
- f. In consideration for the Lease of the Site, the Concessionaire shall pay the Authority, the Lease Rental as specified in Section 8.2.1 hereof.
- g. The Project Site Lease Deed shall be duly registered with the relevant Government Authority by the Concessionaire at the Concessionaire's cost (stamp duties, registration charges etc.) as soon as practicable, within 90 (ninety) days of the date of execution thereof, and a notarized copy of the same shall be provided to the Authority.
- h. Following delivery of possession of the Project Site, the Concessionaire and the Persons claiming through or under it shall keep the Project Site free from any trespass or encroachment and keep the Authority informed thereof and take appropriate and timely legal and remedial action.

Section 4.2 Leases and Sub- Leases/Contracts

a. No Sub- Lease of Land

The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Authority under the Land Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute an Concessionaire Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

b. Lease of Built-up Area/Space on the Project Site

For the purpose of exercising its rights pursuant to Article 2 of this Agreement, the Concessionaire shall, subject to the provisions hereof, however be allowed to lease / license / or enter in to an agreement for operations and management of any built-up area or space in the Project Site, and it shall have the right, subject to the provisions of this Agreement, to enter into Contractual Arrangements with third parties in relation to any part of the Built-up Area or Space in the Project Site provided the terms and conditions of such Contractual Arrangements shall not be inconsistent or contrary to the provisions of this Agreement and that such Contractual Arrangements shall be coterminous with the Project Site Lease Deed and this Agreement.

Section 4.3 Possession and Use of Project Site

a. The Authority confirms that:

- i. The Site together with the necessary Easement rights has been acquired through the due process of law belongs to and is vested in the VMRDA, and further that the VMRDA has full powers to hold and deal with the same consistent, inter alia, with the provisions of this Agreement; and
 - ii. The Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person, if any, from whom the Site or any part thereof had been acquired and that the same shall be the sole responsibility of the VMRDA.
- b. In the event the Concessionaire is obstructed by any Person claiming any right or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, Authority shall, if called upon by the Concessionaire, defend such claims and proceedings at its cost and expense and the Concessionaire shall not be liable for the same in any manner whatsoever.
- c. The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, or to enter into Contractual

Arrangements in relation to the Project Facilities and to assign its rights here under and create a Security Interest in favour of the Lenders in accordance with the provisions of this Agreement.

Section 4.4 Access to Site

- a. Following the delivery of Vacant Possession of the Project Site on “as is where is basis” by the Authority to the Concessionaire, the Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site to,
 - i. The Authority, or the Independent Engineer/Consultant, or the Experts and their duly authorised personnel and representatives so as to carry out their respective functions and obligations hereunder.
 - ii. The representatives of or Persons duly authorised by the relevant Government Authority concerned with safety, security or environmental protection to inspect the Site, and the Project and the Works, carry out their respective duties and functions and to investigate any other matter within their authority.
 - iii. The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

Section 4.5 Information about Project Site

- a. The Authority agrees to provide to the Concessionaire upon a reasonable request, any further information relating to the Project Site, which the Authority may now possess or may hereafter come to possess. Subject to this, the Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site and the Concessionaire shall accept the Project Site handed over to it by the Authority on an “as is where is basis”.
- b. The Concessionaire acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Site, and
 - i. Accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the existing structures / movable / immovable items at the Site that need to be demolished / disposed off by the Concessionaire on behalf of the Authority at its own cost, the adequacy of the connectivity links to the Site and the availability or unavailability of adequate supplies of water and electricity); and
 - ii. Agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site (or part thereof) or for any other reason pertaining to the Site.

Section 4.6 Authority’s Property at Project Site

- a. All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.), lying at the Project Site or generated during the demolition of existing structure / implementation of the Project shall be promptly shifted by the Concessionaire to an appropriate location as indicated by the Authority, at its cost in accordance with

Applicable Laws. The Concessionaire may if it deems appropriate use the same for the execution of the Works.

- b. All articles of salvage / scrap value or antiquity found on the Project Site shall be the property of the Authority. The Concessionaire shall take reasonable precautions to prevent its labour and personnel and that of its Contractors from removing or damaging any such article or thing. The Concessionaire shall immediately upon discovery of such article or thing, inform the Authority, which may issue instructions for dealing therewith.
- c. The Concessionaire agrees to demolish all existing structures / buildings from the Site and disposed off all movable items and debris from the Site, at its own cost. For the avoidance of doubt, any salvage value collected by the Concessionaire from the disposal of movable items and scrap including but not limited to reinforcement steel, fabricated structures, fixtures, fittings, furniture, debris, etc. shall be promptly remitted to the Authority by the Concessionaire. For the avoidance of any disputes on the salvage value, the Concessionaire shall stack all such items at the Site and call for competitive quotes for disposal of the same, and obtain prior approval of the Authority, prior to disposal of the same. In case the Authority is not in agreement with the said the amount, the Authority shall arrange, at its own cost, to dispose off such items on its own, within 02 (two) month from the date of stacking of the same and intimation of the highest quote received by the Concessionaire. The parties hereto agree that any delay in the disposal / carting away of such debris shall not be a reason for extension of the Concession Period.

Section 4.7 Reservation

- a. The Authority accepts and reserves unto itself all the mines, minerals, coals, gold, etc. in, over, on or under the Site and full right and power at all times to undertake, with reasonable prior notice to the Concessionaire, all acts and things which may be necessary for searching, removing, appropriating or enjoying the same without providing or leaving any vertical support for the surface of the land at the Site or for any structure or building thereat; provided always the Authority shall be obligated to pay reasonable compensation to the Concessionaire for all damage, directly resulting from the exercise of the rights hereby reserved or any of them.

ARTICLE 5 OBLIGATION OF PARTIES

Section 5.1 Obligations of the Concessionaire

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Concessionaire shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the Concession Period with the following obligations:

Section 5.1.1 Project Implementation

- a. The Concessionaire shall construct the Project Facilities in accordance with the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes, do all such acts, deeds and things, as may be required under this Agreement. The Concessionaire shall make payments towards Annual Lease Rentals, Revenue Share i.e. Additional Development Premium in the terms specified in this Agreement.
- b. Concessionaire shall design, plan, develop, finance, construct, market, administer, manage, operate and maintain the Project Facilities, including without limitation, the necessary infrastructure, services and facilities, during the Concession Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- c. The Concessionaire shall co-ordinate with the Authority for the demarcation of the widening of the internal road as per the Minimum Development Obligations and take up the widening to same as per the plan of the VMRDA, prior to commencement of construction works at the Site.
- d. In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.
- e. The Concessionaire may appoint Contractors to perform its obligations under this Agreement in accordance with Section 5.3 below; provided that the Concessionaire shall ensure that the Contractors function in accordance with the terms and conditions of this Agreement and do not violate or cause of breach of this Agreement. The Concessionaire shall indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf in accordance with Section 5.3 below.

Section 5.1.2 Applicable Permits

- a. The Concessionaire shall obtain and maintain at its cost all Applicable Permits, including all environmental permits, CRZ Clearance, in conformity with the Applicable Laws and be in compliance therewith. Subject to the Concessionaire complying with the Applicable Laws and Good Industry Practice, the Authority shall facilitate the securing of such consents, clearances and Applicable Permits.
- b. The Concessionaire shall expeditiously make necessary applications to the relevant Government Authorities for all Applicable Permits to meet the stipulated time frames

in this Agreement, for completion of the Works, to achieve various performance milestones, if any, and to perform all of its other obligations under this Agreement. The Concessionaire shall supply the appropriate particulars and details to such Government Authorities as may be necessary to confirm that the Concessionaire fulfils the eligibility criteria to enable such Authority reasonably to consider the request for the grant of the relevant Applicable Permits and, following the grant of any such Applicable Permits, the Concessionaire shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder.

Section 5.1.3 Personnel and Labour

- a. The Concessionaire shall
 - i. Be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labour and personnel employed by the Concessionaire, its Contractors, agents and representatives on or in connection with the Works or the Project Site under or through whatever legal relationship;
 - ii. Be solely responsible and liable for compliance with all Applicable Laws, including labour (without limitation, The Employee Provident Fund & Misc. Provisions Act 1952, Employees State Insurance Act 1948, Workmen's Compensation Act 1923) and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project.
- b. The employees of the Concessionaire and its Contractors or its vendors / licensees / O&M Contractors shall at all times be the responsibility of the Concessionaire and the Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

Section 5.1.4 Subcontracting

- a. The Concessionaire may appoint at its cost and risk, Contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, for the performance of any of its obligations under this Agreement, provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the management, operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the assignment of any of the rights vested with the Concessionaire under this Agreement to the Contractors. The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.
- b. The Concessionaire shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.
- c. For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Contractor by the Concessionaire for any of the aforesaid purposes, the

Concessionaire shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Authority under this Agreement and the appointment of Contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Concessionaire from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Concessionaire does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Contractors/ subcontractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the Contractor in the implementation of the Project/execution of Works.

- d. The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the Contractors and shall indemnify the Authority and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the VMRDA may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Concessionaire of its obligations to the Contractors including non-payment of any monies to such Contractors.

Section 5.1.5 Transaction Documents

- a. The Concessionaire accepts and undertakes to ensure that the terms of all Transaction Documents (including but not limited to the agreements between the Concessionaire and Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of this Agreement shall prevail.
- b. The Concessionaire shall
 - i. Provide to the Authority notarised true copies of every Transaction Document duly executed, to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of such execution or amendment etc.
 - ii. Not make any replacement, modification or amendment to any of the Financing Documents at any time without the prior written consent of the Authority if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Authority and in the event any replacement, modification or amendment is made without such consent, the Concessionaire shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Authority.
 - iii. Comply with its obligations set out in the Transaction Documents.
 - iv. Ensure and procure that each Project Contract contains provisions that would entitle Authority or a nominee of the Authority to step into such agreement at the Authority's discretion, in place and substitution of the Concessionaire in the event of termination pursuant to the provisions of this Agreement. (the "Covenant"). For the avoidance of doubt, it is expressly agreed that, the Project

Contracts shall be deemed to cease to be in force and effect from the Transfer Date without any liability whatsoever on Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Contracts and undertakes that it shall, in respect of each of the Project Contracts, procure and deliver to Authority an acknowledgement and undertaking, in a form acceptable to Authority, from the counter party(ies) of each of the Project Contracts, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from Authority in the event of termination.

- v. Not enter into any material Transaction Document, including without limitation, any Construction Contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed by the Independent Engineer/Consultant appointed by the Authority and approved by the Authority, prior to the execution of any such contract.

Section 5.1.6 Reporting Requirements

The Concessionaire shall provide to the Authority and the Independent Engineer/Consultant reports on a regular basis during the Concession Period in accordance with the provisions of Article 7 and as set forth elsewhere in the Agreement and at all times provide the Authority such information, data and documents as the Authority may reasonably require.

Section 5.1.7 Accidents and Safety

- a. The Concessionaire shall
 - i. Develop, implement and administer a surveillance and safety program for the Project and the users thereof and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.
 - ii. Take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
 - iii. Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

Section 5.1.8 Taxes and Charges

The Concessionaire shall

- a. Pay in a timely manner all taxes (including property tax), duties, levies, cess and charges including but not limited to income tax, TDS deducted, sales tax, goods and service tax, excise duty, customs duty etc. that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.
- b. Pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the

implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

- c. Reimburse to the Authority the property tax, if any, paid by the Authority towards the Project Site.

Section 5.1.9 Foreign Exchange Risk

The Concessionaire shall bear any risk on account of fluctuation in foreign exchange rates during the Concession Period.

Section 5.1.10 Contractual Arrangements

The Concessionaire shall undertake development of the Site and Project Facilities thereon and enter into Contractual Arrangements in accordance with the provision of this Agreement.

Section 5.1.11 Environment Management Plan

The Concessionaire shall comply with its obligations under the Environment Management Plan.

Section 5.1.12 Marketing

The Concessionaire shall undertake marketing, public relations and brand building of the Project and each of the Project Facilities at its cost and expense.

Section 5.1.13 Others

The Concessionaire shall

- i. Maintain requisite insurance in accordance with the provisions hereof.
- ii. Provide all assistance to the Authority and the Independent Engineer/Consultant /Experts as they may reasonably require for the performance of their duties and services under this Agreement;
- iii. Be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards.
- iv. Provide representatives of the Authority, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review progress of construction and the operations of the Project and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Authority to inspect any works shall not, in relation to such works, (i) amount to any consent or approval of the Authority or shall the same be deemed to be a waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work.
- v. Provide or arrange at its cost during the Concession Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project Facilities and be in compliance to

the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

- vi. If required, at its cost install meters to measure the consumption of power and water. The Concessionaire shall, at its cost, make alternate and backup arrangement for power, including but not limited to installation of generators and for water, subject to the Concessionaire obtaining Applicable Permits if any.
- vii. Hand over the Project /Project Assets free from encumbrances and encroachments to the Authority or its nominated agency upon the expiry/termination of this Agreement.

Section 5.1.14 Additional Obligations during the Construction Period

The Concessionaire shall

- i. Promptly commence construction and complete the Project Facilities in accordance with the provisions of this Agreement, including the Project Implementation Schedule and the Specifications and Standards, the terms of Applicable Permits, the Applicable Laws and Good Industry Practice and achieve the Project Completion.
- ii. Entrust responsibility for project management and construction to professionally competent Persons;
- iii. Give priority to safety in its construction and planning activities and implementation of any of the Work including having suitable illumination at night with barriers to prevent third parties from being injured by the Works
- iv. Promptly carry out at its cost such further Works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer/Authority and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- v. Incorporate suggestions (if any) made by the Authority or any Government Authority in the designs proposed for constructions.
- vi. Confine its activities to the Project Site and to any additional areas arranged by the Concessionaire at its cost and not encroach upon, damage or degrade adjacent land or water body and be liable for all costs and consequences for its failure to do so;
- vii. Commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate in respect of the relevant Project Facilities.

Section 5.1.15 Obligations related to Operations and Maintenance

The Concessionaire shall

- i. Operate, maintain, manage, refurbish / replace the Project Assets the Project / Project Facilities including the Parking area at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- ii. Upon achieving Project Completion, shall commence Commercial Operations, if not already done so. Provided that the Concessionaire shall have the right to commence Commercial Operations of a Project Facility once it has obtained the Completion Certificate in respect thereof (which may be before achievement of Project Completion)

- iii. Employ qualified Persons to efficiently implement, operate and manage the Project.
- iv. At any point during any large event at the Project / Project Facilities, shall, at its own cost, deploy manpower for management of smooth traffic to / from the Project / Project Facilities without congesting the entry / exit point of the Project Site.
- v. Make available all necessary financial, managerial, technical, technological and other resources for the operations and, maintenance of the Project to conform to the requirements of this Agreement.
- vi. Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the Authority in a good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
- vii. Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project and the revenues earned there from.
- viii. Comply with all Applicable Laws, including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials.
- ix. Promptly and diligently repair, replace or restore the Project or part thereof which may be destroyed, lost or damaged.
- x. Except as provided or authorized under this Agreement, not, without the prior written consent of the Authority, remove or replace any asset comprised in the Project/Project Facility.
- xi. Ensure timely payments to the Authority in accordance with the provisions of this Agreement.
- xii. Install, equip and operate and maintain an up-to-date fully automated and computerized revenue collection and billing system and terminals with appropriate centralized software package and linked to a single central server and provide complete and unrestricted access thereto at all times to the Authority or its authorized representative along with the requisite access codes, manuals and other requisites and a computer terminal to the Authority or its authorized representative so that the Authority for viewing the income flows and revenues generated from the Project and thereby of the revenue share payable to it under this Agreement.
- xiii. Provide to the Authority at its cost, during the Concession Period, the monthly revenue statement for the Project, within 10 days of the following month.
- xiv. Carry out the commercial operations and provide the services and facilities as per the requirements of this Agreement and make changes therein only with the prior written approval of the Authority.
- xv. Not undertake, cause or suffer the undertaking of Prohibited Activities by any person at the Site or the Project Facilities or part thereof.
- xvi. Ensure Solid Waste Collection and Disposal System in place by implementation of environmentally sound solid waste collection mechanisms. Processing and disposal of Solid waste shall not be allowed within the site Premises.
- xvii. Recycle and reuse the Liquid waste, instead of disposing into the drains, for gardening,

landscaping, flushing of toilets etc., and thus making the project as “Zero Discharge” project.

- xviii. The Project shall be user friendly and provide eased access to differently able persons to all the project facilities in accordance with “Persons with Disabilities Act, 1995” with subsequent amendments and ‘UN Convention for Rights of Persons with Disabilities (UNCRPD).

Section 5.2 Obligations of Preferred Bidder

Section 5.2.1 Shareholding Lock-In

The Preferred Bidder/Consortium, as a whole, shall hold a minimum of 51% of the paid-up equity share capital of the Concessionaire at all times during the period up till the 05 (five) years from the post commercial operations date (CoD) (“Lock-in Period”). In case of Preferred Bidder being a Consortium, the Consortium together needs to hold a minimum of 51% of the shareholding of the Concessionaire. Out of the 51%, the Lead Member shall hold at least 26 per cent and other constituent member of the Consortium, shall also hold atleast 10% of the paid-up equity share capital of the Concessionaire for a period that shall not be less than 05 years from the post commercial operations date (CoD) i.e. the Lock-in-Period. No change in composition of the Preferred Bidder/Consortium below the shareholding specified in this clause 5.2.1 shall be made for a period of 05 years (the “Lock-in Period”) from the post commercial operations date (CoD). Any transfer of such share capital after such 05 years shall require the prior written approval of the Authority, which shall not be unreasonably denied. In case, the Authority fails to respond with valid reasons in 30 days of the communication received from the Concessionaire,- the Concessionaire shall serve upon the Authority a notice to respond to its request within 30 days time from the date of such notice. Provided, nothing contained in this sub- section shall preclude or prevent pledge of the Preferred Bidder’s/Consortium’s shares in the Concessionaire in favour of Lenders as security for the Financial Assistance and enforcement thereof in accordance with this Agreement and/or the Financing Documents. After the expiry of the Lock-In Period, Preferred Bidder/Consortium may with prior written approval of the Authority may replace the Lead Member or the other constituent member of the Consortium by another entity, provided that the substitute entity holds at least 26% of the paid-up equity share capital of the Concessionaire. For the avoidance of doubt, permitting such dilution in shareholding shall be at the discretion of the Authority.

Section 5.2.2 Funding Obligation

The Preferred Bidders shall ensure that the Concessionaire has, at all times, sufficient funds to ensure the due discharge of its payment obligations to the Authority under this Agreement. In the event the Concessionaire is not able to discharge its payment obligations to the Authority under this Agreement on account of lack of funds, the Authority shall have the right to claim and recover from the Preferred Bidders (jointly and severally) and the Preferred Bidders shall have the obligation to pay, all such amounts that are due and payable by the Concessionaire to the Authority under this Agreement including the interest and penalty, if any.

Section 5.3 Obligations in Respect of the Concessionaire

The Preferred Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Concessionaire's activities such that its experience and expertise become available to the Concessionaire on an on-going basis:

- a. Jointly alongwith the Authority, prepare the inventory of the existing structures, movable / immovable items / buildings at the Site, demolish and cart away the debris at its own cost and remit to the Authority the salvage / scrap value received.
- b. Preparation of the DPR and the Designs and Drawings;
- c. Arranging the financing for the Project, including mobilization of debt and equity;
- d. Procurement of Applicable Permits for commencing and implementing the Project;
- e. Execution of Project Contracts in respect of engineering, procurement, construction, management, Operation/or and Maintenance of Project/Project Assets
- f. Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.
- g. Compliance with and implementation of the Environment Management Plan;
- h. Marketing of the Project;
- i. Compliance with the provisions of this Agreement relating to liability and indemnification;
- j. Implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.
- k. Install, equip and operate and maintain an up-to-date fully automated and computerized revenue collection and billing system and terminals with appropriate centralized software package and linked to a single central server and provide complete and unrestricted access thereto at all times to the Authority or its authorized representative along with the requisite access codes, manuals and other requisites and a computer terminal to the Authority or its authorized representative so that the Authority for viewing the income flows and revenues generated from the Project and thereby of the revenue share payable to it under this Agreement.
- l. Provide to the Authority at its cost, during the Concession Period, the monthly revenue statement for the Project, within 10 days of the following month.
- m. Not develop / operate anything on the Project that is not permitted by law or in the negative list at **Appendix - 17** of this Concession Agreement

Section 5.4 Obligations of Authority

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Authority agrees and undertake as under:

Section 5.4.1 Applicable Permits

- i. The Authority shall, at the request of the Concessionaire, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case

may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (a) provides to the Authority all necessary relevant details and other information as may reasonably be required by the Authority and (b) keeps the Applicable Permits in force and effect throughout the Concession Period.

- ii. Upon written request from the Concessionaire, assist the Concessionaire on best effort basis in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

Section 5.4.2 Tax Benefits

In cases found appropriate and if applicable for the Project, the Authority may, at the request of the Concessionaire, issue recommendatory or supporting letters to any Government Authority recommending tax or duty concessions/ benefits to the Concessionaire / the Project, if any applicable for the Project as per the prevailing schemes / Policies of the State / Central Government. For the avoidance of doubt, this clause shall not be interpreted as any new / additional proposal / case that shall be made for providing any special exemption for the Project. Further, any such support by the Authority shall be provided on best efforts basis and shall not be considered as an obligation or commitment by the Authority.

Section 5.4.3 Off-site Infrastructure

The Offsite infrastructure (Power and Water) are being provided by different agencies like Visakhapatnam Municipal Corporation, Andhra Pradesh Power Distribution Company Limited (APPDCL) etc. The Concessionaire is required to apply to the concerned Authorities and obtain the necessary approvals in this regard, on its own. The Authority will, on best efforts basis, extend all necessary support to the Concessionaire based on written request of the Concessionaire.

Section 5.4.4 Change of Land Use

- a. No change of land use is envisaged nor shall be permitted for the Site.

Section 5.5 Others

In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Concessionaire of its rights and benefits

under the Concession granted herein, the Authority shall, if requested by the Concessionaire in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

ARTICLE 6 PROJECT IMPLEMENTATION

Section 6.1 DPR and Designs

- a. The Concessionaire, immediately after grant of the Concession, shall at its cost prepare and submit to the Authority draft DPR and Designs of the Project, that shall be in compliance to the Minimum Development Obligations (MDOs) set forth in this Agreement.
- b. The DPR shall, inter alia, set out the full details of the developmental activities proposed to be carried out by the Concessionaire for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Concessionaire, the Project Implementation Schedule with the Project Milestones, detailed schedule bar charts / PERT networks with milestone dates, master plan and building plan of the Project, including the site development, proposed construction activities, names of likely Sub-contractors/ vendors etc., plans for obtaining applicable permits, plans for mobilization of finances, plans for marketing the Project, proposed arrangements for operating and managing the Project, the organisation chart of the Concessionaire and such other similar details which define and clarify the method and direction of the Concessionaire's plans for the implementation of the Project. For the avoidance of doubt, apart from the Minimum Development Obligations, the proposed developmental activities shall be strictly limited to those only permitted under the AP Tourism Policy 2020-25 and permitting any other development shall be beyond the purview of this Agreement, irrespective of the same being permissible as per the permissible land use of the Project Site. Similarly, the Prohibited activities / developments as specified in **Appendix 17** of the Agreement shall not be developed, irrespective of the same being permissible as per the permissible land use of the Project Site.
- c. The Authority shall review the DPR and Designs submitted by the Concessionaire for conformity with the Specifications and Standards and, subject to the provisions of sub-section (d) herein below, communicate Authority's approval immediately. The Authority may in consultation with the Concessionaire prescribe a schedule for submission, clarifications and approval of such plan.
- d. In the event that Authority has any objection to the DPR and/or Designs and Drawings or any part thereof, it shall promptly notify the Concessionaire of its objections in writing and seek clarifications or suggest changes or modifications or corrections thereto in writing. Thereupon, the Concessionaire shall provide necessary clarification to the Authority or re-submit revised DPR and/or Designs and Drawings or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Authority.
- e. If the Authority does not provide its written objections to the DPR and the Design and Drawings submitted to it by the Concessionaire within thirty (30) days of submission, the Authority shall be deemed to have approved such DPR and Design and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly. However, nothing in this Agreement shall derogate from the Concessionaire's obligation to obtain the Applicable Permits in relation to the construction and commencement of commercial operations/ use of the Project Facilities from the relevant authorities under Applicable Laws and Development Controls.
- f. Notwithstanding any express or deemed approval or failure to review by or the

comments or observation of the Authority in relation to the DPR and Designs and Drawings, the Concessionaire shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Concessionaire shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

- g. The Concessionaire may, with the prior written approval of the Authority, make or permit alterations in or addition to any DPR and Designs and Drawings, specifications and calculations approved or deemed to be approved by the Authority under this Agreement.
- h. Designs, drawing or specifications, if any, provided by the Authority to the Concessionaire shall only be indicative and the Concessionaire shall accept the same at its sole risk, cost and consequence.
- i. The Authority shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the DPR and Designs and Drawings and the construction and implementation of the Project/Works by the Concessionaire on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Authority, any Government Authority.
- j. The Concessionaire shall adopt the relevant designs/themes for building the facilities to maintain the aesthetics, theme and visual appeal similar to that envisaged by the Authority (as depicted in the Bidding Documents) and needs to submit the DPR and obtain approval from the Authority within the Compliance Period.

Section 6.2 Development of Site and Implementation of Works

- a. The Concessionaire shall commence the Works immediately after obtaining necessary and applicable approvals from the respective Competent Authorities under Applicable Laws and Development Controls for the master plan and building plans.
- b. The Concessionaire shall, by itself or through its Contractors, at its cost and risk undertake the development of the Site, including barricading during construction, levelling, clearing, shifting of utilities (if any), landscaping and demarcation and zoning of the Site, etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice.
- c. The Concessionaire shall arrange at its cost the infrastructure facilities, including but without limitation, the power and water supply, necessary for carrying out the Demolition, Construction, Operation and Maintenance of the Project. Each of the Project Facilities shall have adequate facilities with respect to water supply, power, entry & exit arrangement, fire safety provisions, etc.
- d. The Concessionaire shall, by itself or through Contractors at its cost and risk establish, install, equip, provide, construct, as the context admits or requires, and commission the Project Facilities in accordance with the requirements of the provisions hereof, including the Specifications and Standards and provide the same to the users/others in an equitable, fair and non-discriminatory manner.
- e. The Concessionaire or the Persons claiming through or under it, as the case may be, shall be responsible for doing all such acts, deeds and things as may be necessary and expedient for establishing the Project including, without limitation, procuring at

its/their own risk and cost all goods, materials, things and services necessary for the development and construction thereof and arranging at its/their cost the construction power, water, materials and labour required for establishing the Project, without in any way relieving the Concessionaire of its obligations as set out in this Agreement. Subject to the provisions of clause 6.2 (g) hereof the Concessionaire shall not be entitled to nor shall it seek or raise any demand for any extension of time for completion of construction on account of any shortage of any material or resources or delay in procurement of the same for any reason whatsoever.

- f. The Concessionaire shall on and from the Compliance Date, in accordance with the Specifications and Standards, develop the Site and requisite infrastructure facilities so as to:
 - i. Efficiently manage, make available, maintain and operate the Project consistent with prudent standards of safety and technical sufficiency;
 - ii. Provide the necessary resources for the operations and maintenance of the Project;
 - iii. Provide non-discriminatory access of the Project Facilities within the Project to the users and other persons.
- g. The Concessionaire shall complete the construction of all the Project Facilities within a maximum period of thirty six (36) months from the Date of Signing Concession Agreement.

Section 6.3 Project Completion

- a. The Project shall be complete only when the Completion Certificate for the Project has been issued by the Authority, in relation to all the proposed Project Facilities constituting the Concessionaire's Minimum Development Obligations (MDOs). Authority, shall issue a certificate confirming the completion of construction of the Project in accordance with the provisions of Section 6.3 (b) (the "**Project Completion**"). The Completion Certificate in relation to the Project MDOs shall be issued, only after Construction Works in respect thereof have been completed and the necessary Applicable Permits in respect thereof inter-alia the Occupancy Certificate, power connection and licenses necessary for commencement of commercial operation, from concerned Government Authorities/ departments, etc, have been duly procured. The Completion Certificate shall specify the date on which, in the opinion of the Authority, the Project was completed. Similarly, the Authority shall specify the date on which in its opinion the Project Completion was achieved.
- b. For the avoidance of doubt, Project Completion herein refers to the completion of 100% of the Project Facilities as detailed under MDOs at Appendix 3 and as per the approved DPR;
- c. The Concessionaire shall achieve Project Completion in accordance with the provisions of this Agreement (the "**Scheduled Project Completion Date**"), failing which the Concessionaire may apply to the Authority for grant of extension of time for Project Completion in blocks of 6 months up to a maximum additional period of 12 months from such date and the Authority may permit the same subject to the payment of liquidated damages by the Concessionaire to the Authority at the rates specified below:
 1. First Extension up to a period of 6 months beyond the Scheduled Project Completion Date– 0.50% of the Total Project Cost as per the DPR

2. Second Extension between 6 months and 12 months, beyond the Scheduled Project Completion Date–1.0% of the Total Project Cost, to be paid over and above the damages payable for the first extension, in terms of point 1 above.

For the avoidance of doubt, it is agreed between the parties that, any extension in time due to non-permissibility of development envisaged in MDO shall be without any damages, until such time that the development is permissible by an amendment or new notification on permissible developments. Notwithstanding anything contained in the clause, such extension shall not be construed as extension in the Concession Period or for payment of the ADP, which shall commence in full as per the terms of this Agreement.

- d. In the event that Project Completion does not occur even within one year from the Scheduled Project Completion Date (extended time period granted to the Concessionaire by the Authority subject to payment of damages in terms hereof), for any reason other than Force Majeure or reasons attributable to the Authority, as certified by the mutually accepted third party Expert, and subject to any provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, the Authority shall be entitled to invoke the Performance Security, except in the case of the Project Facility / component of MDO not being permissible for development as per the existing development control regulations, and to further, at its option, terminate this Agreement for an Concessionaire Event of Default in accordance with the provisions of Article 16 hereof. Provided that instead of terminating this Agreement, the Authority may its sole discretion extend the time for achieving Project Completion on such terms and conditions, as it deems appropriate.
- e. The Concessionaire shall commence Commercial Operations of a Project Facilities only after issuance of Completion Certificate by the Authority in respect thereof.

Section 6.3 A Tests

- a. At least 30 (thirty) days before the likely completion of the construction of the Project/ or a Project Facility, the Concessionaire shall notify the same in writing to the Authority/ Nodal Officer as the case may be and of its intention to conduct the Tests for completion of the Construction Works. Such notice will set out the place, date and time when such Tests will be performed (which shall not be on a date which is earlier than 10 (ten) days following the date of such notice and at least 7 (seven) days in case of any subsequent Tests or retests). The Authority shall have the right to attend such Tests. The Nodal Officer shall attend such tests with a view to determine whether completion of construction has occurred.
- b. Within one (1) month from the date of inspection in accordance with sub-section (a) above, the Authority shall issue a Completion Certificate (the “**Completion Certificate**”) on successful completion of the Tests if the “Project”, or any Project Facility thereof, to the Authority’s reasonable satisfaction, can legally, safely and reliably be placed for Commercial Operations and is found satisfactorily complete in all respects.
- c. If the Authority certifies to the Parties that it is unable to issue the Completion certificate because of the events or circumstances which excuse the performance of the Concessionaire’s obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall

reschedule the Tests and hold the same as soon as reasonably practicable.

- d. The Concessionaire shall bear all the expenses relating to Tests under this Agreement. Provided, however, if the Authority requires the Concessionaire to conduct any Test that is not specified in this Agreement, the Authority shall forthwith reimburse to the Concessionaire, the expenses incurred by the Concessionaire thereon.

Section 6.3 B Inspection and Certification by Authority

- a. After the completion of the Construction Works of the Project or any Project Facility, the Concessionaire shall at its cost procure the issuance of the necessary occupancy certificate/ Permits for the Project Facility(ies) from the concerned Government Authorities, if any required, within 45 (forty-five) days of the date of such completion.
- b. The Concessionaire shall procure the preparation and submission of the necessary documentation for complying with and obtaining the occupancy certificate, including the payment of any fees / charges, etc., as applicable.
- c. The Concessionaire should submit 'As-Built drawings' in its entirety for the entire Project before the issue of Completion Certificate in respect of the entire Project, to the satisfaction of Authority/ Government Authorities, for reference of Authority at a future date.
- d. Whenever obligatory inspection by the concerned Government Authorities is required, the same shall be arranged and attended to by the Concessionaire or its Contractors or authorised representatives.
- e. All the deficiencies pointed out by the concerned Government Authorities/ Authority during the inspection shall be promptly attended by the Concessionaire at its cost to the entire satisfaction of the inspecting authorities.
- f. The Authority shall provide and procure the necessary cooperation, assistance and facilitation to the Concessionaire during inspection, testing and certification of the Project by Government Authorities and in the grant of requisite certificates.

Section 6.4 Marketing of the Project

- a. The Concessionaire shall be solely responsible for the marketing of the Project. The Concessionaire shall be entitled to commence such marketing at its cost and risk from the COD and to accept considerations from such users from such date; provided that Authority shall not be liable in any manner whatsoever to any Person in this behalf and the Concessionaire shall disclose the same to such Users.
- b. The Concessionaire shall ensure that the advertising and marketing of the Project is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws.

Section 6.5 Operation and Maintenance of the Project

Section 6.5.1 O&M Works

- a. Effective from date of Commercial Operations of a Project Facility and until the end of the Concession Period, the Concessionaire shall undertake, at its cost and risk, the operation and maintenance of the relevant Project Facility (and of the Project from Project Completion) including the buildings, the common areas, the landscape and other

spaces, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions of Section 5.1.4 through O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Concessionaire of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion or Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such contractors the Concessionaire shall inform the Authority of their appointment.

- b. The Concessionaire shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- c. The Concessionaire shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Authority or any Government Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- d. The Concessionaire or the Persons claiming through or under it shall be free to determine the User Charges at market driven rates in respect of the use of the Project/ Project Facilities or the goods, services, facilities or amenities provided thereat and shall have the right to demand, collect, retain and appropriate and revise the User Charges; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice. and a statement of the revised User Charges for the revenues streams of the Project Facilities shall be submitted to the Authority along with the monthly revenue statements, as per clause 5.1.15 (xii) of this Agreement.

Section 6.5.2 Contractual Arrangements

- a. Subject to the provisions of this Agreement, the Concessionaire may enter into such Contractual Arrangements as it may deem fit and, effective from the Commercial Operations Date of a Project Facility, grant in accordance with the terms thereof the possession of the relevant area of the Project Facility to such Person (hereinafter the "Contractual Counter Parties"); provided that the use of Project shall not comprise the Prohibited Activities as for the applicable laws for the site jurisdiction and also not in competition with the activities of Authority.
- b. The Concessionaire may determine, demand, collect, revise, retain and appropriate the User Charges for such Contractual Arrangements at rates determined by the Concessionaire;
 - i. All Contractual Arrangements shall be subject to the following terms and conditions:
 - ii. The terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties, if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof; For the avoidance of doubt, any Contractual Agreement shall be subject to the terms of the ADP payable to the Authority.
 - iii. The duration of such Contractual Arrangements shall be limited to and be co-

- terminus with/not exceed the Concession Period herein;
- iv. All such Contractual Arrangements shall be determined and terminated automatically and simultaneously on the expiry, determination or termination of this Agreement/the Concession Period, as the case may be;
 - v. Such Contractual Arrangements shall come into effect and operation only upon the Concessionaire achieving the Commercial Operations Date of the relevant Project Facility in accordance with the provisions of this Agreement unless otherwise authorised by the Authority in writing;
 - vi. The Concessionaire shall at its cost carry out or cause the operation and the execution and existence of Contractual Arrangements which shall, in no manner, relieve the Concessionaire of its liability or obligations as set out in this Agreement;
 - vii. The execution of Contractual Arrangements shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
 - viii. Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Land Lease Deed on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement or the Land Lease Deed, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
 - ix. The Concessionaire shall submit to the Authority for its information and record either a notarised true copy of the agreements/documents or a copy duly certified by Statutory Auditor/ Authorized Representative relating to the Contractual Arrangements within 60 (sixty) days of the date of execution, modification or amendment thereof.
 - x. The Concessionaire's failure to comply with this Section 6.5.2 shall be at its cost, risk and consequence and constitute a Concessionaire Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

Section 6.5.3 No Liability of Authority for Contractual Arrangements

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

Section 6.6 No Breach

- a. The Concessionaire shall not be considered to be in breach of its obligations relating to the Project nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
 - i. Force Majeure Events, subject to provisions of Article 14;
 - ii. Extensions granted under the provisions of this Agreement, if any, or specific extensions granted by the Authority;
 - iii. Measures taken to ensure the safe use of the Project Facilities except when the

unsafe conditions have been occasioned by the Concessionaire's failure to perform its obligations under this Agreement.

Notwithstanding the above, the Concessionaire and the Authority may, mutually agree to extend the time period mentioned hereinabove for reasons that they may deem expedient in the interest of the Project.

ARTICLE 7 PROJECT MONITORING

Section 7.1 Nodal Officer

- i. The Authority shall nominate a Nodal Officer for monitoring the Progress of the Project. The Nodal Officer shall monitor the implementation of the Project, review and certify on behalf of Authority with due approval from Authority, the DPR and the Designs and Drawings, conduct on behalf of the Authority the periodic verification of the progress in the construction. The Authority may appoint an Independent Engineer/Consultants, if required, who shall discharge the duties and functions substantially in accordance with the terms of set forth in Appendix 10 and elsewhere in this Agreement. The Nodal Officer/Independent Engineer/ Consultant shall pursue the Concessionaire for submission of periodic reports (at least once every quarter) in respect of its functions

It is hereby clarified that wherever in this Agreement any certification or verification has been stated to be needed or undertaken by the Independent Engineer/Consultants, the same shall be done or undertaken by the Nodal Officer in the event no Independent Engineer/Consultant has been appointed.

- ii. In case, the Authority hires the services of Independent Engineer/Consultant, the cost and expenses of the same shall be borne entirely by the Concessionaire and an amount equivalent to two months retainer of the Independent Engineer/Consultant shall be retained in the Escrow Account to ensure the due payment to the Independent Engineer/Consultants.

Section 7.2 Reporting and Inspection

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

a. Construction Period Reports

- i. The Concessionaire shall within 30 (thirty) days after the execution of the EPC / Construction Contract, provide to the Authority / Nodal Officer/Independent Engineer a copy of the construction schedule created using network techniques. A detailed explanation of the construction methodology, outlining the quality assurance, safety and surveillance plan shall also be included.
- ii. The Concessionaire shall provide to the Authority /Nodal Officer/ Independent Engineer a quarterly progress report during the Construction Period, which shall contain the following information:

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

1. Any areas of significant concern and the action being taken to resolve any significant difficulties;
2. The actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;
3. Any matters which have come to light which are likely materially and adversely to affect the construction of the Project;

4. Any potential or actual deviations from the construction schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
5. A commentary on the progress of construction as against the business plan;
6. Areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning details. The critical path schedules shall be updated and included as part of this report in order of priority.

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

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

Accidents / Incidents: Details of any accidents / incidents occurred at the Project Site and the details of reporting done with the concerned authorities.

- iii. The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Authority /Nodal Officer/ Independent Engineer and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.

b. Operation Period Reports

The Concessionaire shall provide to the Authority/ Independent Engineer/Consultant, if any,

- i. Monthly revenue statement for the Project, within 10 days of the following month.
- ii. a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

Summary of Progress: Summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;

Revenue: Details of the Revenue for the relevant quarter from each source

Maintenance Plan: Maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).

Accidents / Incidents: Details of any accidents / incidents occurred at the Project / Project Facilities and the details of reporting done with the concerned authorities.

- iii. Audited Annual Financial Results and statements of revenues for the Project, within 90 days of the end of the Financial Year for the Project.

c. Additional Information

The Concessionaire agrees to provide the Authority/Nodal Officer such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

d. Inspection

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

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

ARTICLE 8 FINANCIAL COVENANTS

Section 8.1 Financing for Project

- a. The Concessionaire agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
- b. The Concessionaire may assign its rights, or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, and interest under this Agreement, in and to the Project Assets (excluding the Project Site or any part thereof and the rights relating thereto), and its right to receive User Charges in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same including but not limited to the liability of payment of Lease Rentals, ADP and Statutory payments as applicable from time to time. For the avoidance of doubt, the Concessionaire shall not have the right and authority to mortgage, encumber or create, permit or allow the subsistence of any Security Interest whatsoever on the Project Site or any part thereof, in favor of the Lenders or any person in any form, manner, device or method.
 - i. Provided that the Concessionaire shall procure prior permission of the Authority as to the creation of any Security Interest in favor of the Lenders and the Authority shall be informed by the Concessionaire as to the creation of any Security Interest in favor of the Lenders, together with the Lenders particulars within a period of 14 days from the date such Security Interest comes into existence and provide to the Authority within such time notarized true copies of documents/agreements relating thereto. Failure to do so by the Concessionaire shall amount to an event of default on the part of the Concessionaire and any consequential failure or inability on the part of the Authority to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Concessionaire only. Provided that at any given time the Authority shall give such approval only in respect of one Lender; such Lender acting for itself and as agent of the other Lenders (who are providing financing for the Project). The Lenders shall be free to modify the composition of the consortium of the Lenders.
 - ii. Provided further in the event of termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Concessionaire to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement. The Concessionaire shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Concessionaire and the Lenders. If the Concessionaire fails to compensate the Lenders within a stipulated period as mentioned in the financing documents, the lenders, in consultation with the Authority, shall step in and appoint a suitable entity

- as Concessionaire that has agreed to act as such on the terms and conditions of this agreement and financing and security agreements.
- iii. The Concessionaire shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Concessionaire and the Lenders.
 - iv. Provided further, nothing contained in sub-section (b) of this Section 8.1 shall (i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves and (iii) under any circumstances amount to any guarantee from or recourse to the Authority.
- c. Except as stated in sub-section (b) above or elsewhere in this Agreement, the Concessionaire shall not assign its rights, interest or obligation or create a Security Interest with respect to its rights under the Agreement or any part thereof in favour of any Person.
 - d. The Agreement entered by the Concessionaire with the lenders will be sub-ordinate to the Concession Agreement entered by the Concessionaire with the Authority.

Section 8.2 Escrow Account

- a. The Concessionaire shall prior to the Compliance Date open and establish an Escrow Account with a Nationalised or Scheduled Bank, acceptable to the Authority (the “Escrow Bank”) in accordance with this Agreement read with the Escrow Agreement. The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Lenders, for a period until the end of Concession Period.
- b. All revenues, inflows and outflows of cash and receivables on account of Project or otherwise that accrue or arise to the Concessionaire under, in connection with or pursuant to the implementation of the Project under this Agreement including but not limited to all receivables under or pursuant to the Transaction Documents (including without limitation Financial Assistance, the equity contributions, all User Charges, compensation payable by the Authority upon termination of this Agreement pursuant to Article 16), shall be credited to or debited from, as the case may be, the Escrow Account. The Escrow Bank shall be instructed to provide monthly statements relating to such account to the parties.
- c. The Concessionaire shall deposit all cash and receivables from the Project, including collection of User Charges, into Escrow Account, which shall at all times including at the time of termination or expiry of the Agreement, be first used to ensure the payments due and payable to the Authority in terms of this Agreement and, subject to timely payments thereof and retention of the amounts required to ensure the payment of the fees and expenses to the Independent Engineer, transfer the remaining balances to any of the accounts of the Concessionaire or to the order of the Concessionaire in accordance with the terms for the Escrow Agreement. Provided always, all the payments by the Concessionaire to the Authority under this Agreement, including the Lease Rental, Revenue Share (Additional Development Premium), enhancement in the advance Lease Rental, Charges and expenses, in terms with the agreement shall have priority over all other payments that are due and payable by the Concessionaire on any

account whatsoever, excepting the payment of taxes by the Concessionaire to any Government Authority.

- d. The Escrow Account shall be opened and operated at the Visakhapatnam Branch of any Nationalised/Scheduled bank (the Escrow Bank), as approved by the Authority.
- e. The Escrow Bank shall hold the Escrow Account and such monies, from time to time, as may be deposited in the said Escrow Account subject to conditions herein contained and/or in the Escrow Agreement.
- f. The monies held by the Escrow Bank in pursuance of this Agreement shall not be considered as part of the assets of the Escrow Bank, and, being trust property shall not, in the case of a bankruptcy or liquidation of the Escrow Bank, be considered as its assets and shall not be available to the liquidator, bankruptcy trustee or other creditor of the Escrow Bank. The Escrow Bank shall not have any lien or be entitled to exercise claim on the monies in the escrow account.
- g. The Escrow Bank shall maintain the Escrow Account for the tenor of the Concession Period or until receipt of joint written confirmation from the Parties for the termination thereof. Upon termination of the escrow account the Escrow Bank shall transfer any balances in the account to the Concessionaire or to the order of the Concessionaire; provided there are no outstanding claims of the Authority on the Concessionaire.
- h. The Concessionaire shall duly appoint authorized signatories (“Authorized Signatories”) for operating the Escrow Account from among its personnel and inform their names to the Escrow Bank and the Authority. Such Authorized Signatories shall, on or prior to the payment date, issue and sign cheques in favour of the Authority for payments due and payable by the Concessionaire to the Authority hereunder, including the Lease Rental, the Revenue Share / the Additional Development Premium and the Charges and Expenses.

Section 8.3 Payments to Authority

In consideration for the grant of the Concession, the Preferred Bidder/ Concessionaire shall make the following payments/provide following facilities to the Authority in the manner and at the times mentioned hereunder:

Section 8.3.1 Annual Lease Rental

- a. In consideration of the lease of the Site and the rights appurtenant thereto in favor of the Concessionaire, the Concessionaire shall, during the Concession Period, in terms of this Agreement and the Land Lease Deed, make payments to VMRDA with respect to the Annual Lease Rentals. The Annual Lease Rental for the first year of Concession is **₹2,28,00,000 (Indian Rupees Two Crore Twenty-Eight Lakhs Only)**, i.e., 1% of Sub-Registrar Office (SRO) Value of the land (7.97 Acres @₹28,55,60,000 per Acre (i.e., **₹59,000 per Square Yard**)). The amount of Annual Lease Rental shall be escalated at the rate of Five percent (5%) every three years during the Concession Period.
- b. The Annual Lease Rentals shall be paid in advance in equated quarterly installments, by the 7th day of the first month of every quarter during each Accounting Year of the Concession Period in accordance with Lease Rental payment schedule attached as Schedule 2 to the Land Lease Deed.

- c. An amount of ₹57,00,000/- (**Rupees Fifty-Seven Lakh Only**) equivalent to the first three months Lease Rental (computed on the basis of the Annual Lease Rental payable in the first year of Concession) of the Concession Period, has been deposited by the Preferred Bidder/ Concessionaire, with the Authority within 30 days of issue of LOA and prior to the Execution Date. Further, the payment of the subsequent Lease Rentals shall be made on quarterly basis, to be paid in advance by the 7th day of the first month of that quarter for the entire Concession Period.
- d. The Concessionaire shall provide a Bank Guarantee (BG) as security for the payment of the Lease Rentals atleast 10 days prior to achieving Commercial Operation Date and before release of the Performance Security. Such BG shall be equivalent to the Lease Rental to be payable by the Concessionaire for the 6th year of Concession Period and shall be valid till the end of the 6th year of Concession Period. Thereafter, the said BG shall, at the end of every three years, during the subsistence of the Concession Agreement, be replaced with a fresh BG, of an amount equivalent to the Lease Rent for the 9th, 12th, 15th, 18th, 21st, 24th, 27th and 30th year of Concession Period respectively.
- e. In the event of delay from the due date (7th day of the first Month of the quarter) in the payment of the Lease Rentals, the Concessionaire shall be liable to pay to the Authority, interest on the due amount at the rate of 18% (Eighteen percent) per annum, that shall be computed from the first date of the month of the quarter, until the date of actual payment. For the avoidance of doubt, the parties hereto agree that in case of the event of delay, the interest shall be deemed to be applicable and no demand shall be necessary to be raised by the Authority towards the Lease Rentals or the Interest amount due. Further, in case of any payment / part payment made by the Concessionaire, the interest amount due shall be first appropriated / adjusted from such payments, followed by the Lease Rental due, if any, balance after adjustment / appropriation of the interest due, from such payments / part payments by the Concessionaire.
- f. In the event, the payments are delayed beyond a period of 3 quarters; it shall be construed as an Concessionaire default in payment of Lease Rentals. The Authority shall terminate the agreement with the Concessionaire for failure to make the lease payments for over 3 quarters, as per the terms of Agreement.

Section 8.3.2 Revenue Share / Additional Development Premium

- a. In consideration of the grant of the Concession, effective from the commencement of 4th year from the date of signing of the Concession Agreement, and throughout the balance Period, up to the expiry of the Concession Period or early termination the Concessionaire shall in accordance with the provisions hereof, pay to the Authority Revenue Share which shall be, a % (per cent) of the Annual Gross Revenues of the Project or the Minimum Annual Assured Amount of the particular year, whichever is higher) in every Year of the Concession Period (as per Appendix 16). Applicable taxes, including the GST on the above shall also be paid by the Concessionaire over and above the Revenue Share / quoted Minimum Annual Assured Amount. For the avoidance of doubt, in any given year, the Concessionaire shall be liable to pay the % Revenue Share or the corresponding quoted Minimum Annual Assured Amount), whichever is higher. Further, it is clarified that the payment of the Minimum Annual Additional Development Premium shall commence from the commencement of 4th year from the date of signing of the Concession Agreement, irrespective of the COD. In the event, the payments are delayed beyond a period of 3 quarters; it shall be construed as a Concessionaire default in payment of ADP. In case of the delay (subject to a maximum

of 3 quarters, subsequent to which this Agreement shall be liable for termination by the Authority), the Concessionaire shall pay 18% penal interest to the Authority on the amount due, from the date such amount is due. For the avoidance of doubt, the parties hereto agree that in case of the event of delay, the interest shall be deemed to be applicable and no demand shall be necessary to be raised by the Authority towards the Minimum Annual Additional Development Premium or the Interest amount due. Further, in case of any payment / part payment made by the Concessionaire, the interest amount due shall be first appropriated / adjusted from such payments, followed by the Minimum Annual Additional Development Premium due, if any, balance after adjustment / appropriation of the interest due, from such payments / part payments by the Concessionaire. The Authority shall terminate the agreement with the Concessionaire for failure to make the ADP payments for over 3 quarters, as per the terms of Agreement and in such case recover all such dues including the interest due, from the Concessionaire, irrespective of termination of the Agreement.

- b. While the minimum quoted Annual Additional Development Premium shall be paid on a quarterly basis in advance, by the 7th day of the first month of every quarter during each Accounting Year of the Concession Period in accordance with Additional Development Premium payment schedule attached as Appendix-16 to this Agreement, the actual Revenue Share will be the % of the Gross Revenues or the quoted minimum assured ADP, whichever is Higher, based on the Audited Accounts. The Concessionaire shall finalize the Audit of the Accounts for each Financial Year (1st April to 31st March) within 90 days from the Financial Year.. In case of the actual computed Revenue Share of % in a given year is higher than the minimum quoted amount, the differential Revenue Share will be paid before June 30. In case of Delay, the Concessionaire shall pay 18% penal interest. In case, the Concessionaire fails to pay the differential Revenue Share, if any, within 90days from the stipulated time of 90 days from the Financial Year end, the Authority shall have the right to encash the Lease Rental Security for the recovery of the same and recover the balance, if any due, from the Concessionaire. In such case, the Lease Rental Security shall have to be promptly reinstated by the Concessionaire.
- c. The Concessionaire shall pay the Revenue Share for each year during the Concession, commencing from 4th year from the date of signing of the Concession Agreement (irrespective of the commencement of operations) to the Authority by way of a Demand Draft drawn on a Nationalized/Scheduled Bank, payable at Visakhapatnam or by electronic transfer from the Escrow Account, as per directions of the Authority.
- d. The Authority/Nodal Officer and its authorized representatives and Experts /Auditors shall at all times be entitled to inspect the Concessionaire's book of accounts, contracts, invoices, vouchers, bills, receipts etc and to make copies thereof
- e. In the event of delay or default in payment of differential Revenue Share, if any, to the Authority beyond the due date (on or before June 30 of every year) provided herein, Concessionaire shall be liable to pay interest to the Authority on the due amount at the rate of 18% (Eighteen percent) per annum from and including the due date to and excluding the date of payment. A delay or default in such due payment beyond a period of 90 days from its due date shall constitute a Concessionaire Event of Default. For the avoidance of doubt, the parties hereto agree that in case of the event of delay (subject to a maximum of 90 days from the due date, subsequent to which this Agreement shall be liable for termination by the Authority), the interest shall be deemed to be applicable and no demand shall be necessary to be raised by the Authority towards the differential

Revenue Share or the Interest amount due. Further, in case of any payment / part payment made by the Concessionaire, the interest amount due shall be first appropriated / adjusted from such payments, followed by the differential Revenue Share due, if any, balance after adjustment / appropriation of the interest due, from such payments / part payments by the Concessionaire. In case of termination by the Authority on account of non-payment of the differential Revenue Share, in such case the Authority shall recover all such dues including the interest due, from the Concessionaire, irrespective of termination of the Agreement.

- f. The Authority shall have right to appoint at the Concessionaire's cost an Expert, being reputable Independent Auditor, to audit the accounts and record of the Concessionaire on a Quarterly basis to determine the Revenue. The Concessionaire shall make available to such the Authority, its representatives and such auditor all its records, books, documents and other relevant information that may be reasonably be required to check or audit any information, figures, calculation of revenues of the Concessionaire and shall provide the Authority, its representative and such auditor reasonable access to its offices and premises for the purpose of such audit.

The Parties further agree that in the event that the revenue declared by the Concessionaire (on the basis of which the Revenue Share is determined and paid by the Concessionaire to the Authority) is less than the revenue determined by such auditor pursuant to this section 8.3.2, (i) the differential amount shall be payable immediately by the Concessionaire to the Authority upon such determination by such auditor and shall accrue penal interest at the rate of 18% of such amount per annum for the period from the date of finalisation of its accounts for the particular year and until the date of actual payment of the differential amount; (for the avoidance of doubt, penal interest shall be in addition to the interest payable as per clause 8.3.2 (e) of this Agreement, for delayed payment); and (ii) the Concessionaire shall bear all the cost of such Audits.

Section 8.4 User Charges for Project Facilities

Effective from COD and during the balance Concession Period, the Concessionaire shall:

- i. Be entitled to fix at rates fixed/structured at the discretion of the Concessionaire from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the User Charges at market driven rates from users of Facilities / Project for the goods, services, facilities and amenities etc. relating to the Project/Project Facilities/at the Site that are provided, arranged or procured by the Concessionaire by itself or under or pursuant to Contractual Arrangements, subject to, ; a statement of the revised User Charges for the revenues streams of the Project Facilities shall be submitted to the Authority along with the monthly revenue statements, as per clause 5.1.15 (xii) of this Agreement.
- ii. Provide separate customized service or User Charges packages or differential rates or special or seasonal discounts for specific, bulk, regular users or different category of users or during different parts of the year or for timely or early payment.
- iii. The Authority expressly recognizes that if any user fails to pay User Charges, the Concessionaire may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting Contracting Counter Party or user; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of

Government Authorities, if any, and Good Industry Practice in this behalf.

Section 8.5 Audit and Account

a. Appointment of Auditors

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

b. Maintenance of Accounts

- i. The Concessionaire shall, during the subsistence of this Agreement, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Concessionaire shall provide the Authority 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain.

ARTICLE 9 PERFORMANCE SECURITY

Section 9.1 Performance Security

- a. For securing the performance of the obligations of the Concessionaire / Preferred Bidder under the RFP, the LOA, under Section 3.4 of this Agreement and during the Construction Period, the Preferred Bidder for and on behalf of the Concessionaire, has prior to the execution of this Agreement, delivered to the Authority an un-conditional and irrevocable bank guarantee in favor of the Authority, from a nationalized bank operable in Visakhapatnam, for a sum of **₹6,00,00,000/- (Rupees Six Crore Only)**, valid for 4 (four) years from the date of signing of Concession Agreement. The Performance Guarantee will be released to the Concessionaire once the Project Completion is achieved as per the MDOs. The Performance Guarantee shall be encashable and enforceable in Visakhapatnam, Andhra Pradesh. (The “**Performance Security**”), the receipt & veracity of which, is hereby acknowledged by the Authority.
- b. The Preferred Bidder /Concessionaire shall keep the Performance Security valid and in full force and effect at all times during the Construction period until MDOs are completed and until completion certificates are issued as per the provisions of the agreement. This is an essential condition of the Contract and the failure to maintain the Performance Security in accordance with the provisions hereof shall constitute a Concessionaire Event of Default and shall entitle the Authority to terminate this Agreement in accordance with the provisions of Clause 16 hereof.

Section 9.2 Appropriation of Performance Security

- a. In the event of the Concessionaire being in default of the due, faithful and punctual performance of its obligations under the RFP, the LOA, under Section 3.4 of this Agreement and during the Construction Period and until the date of issue of the Completion Certificate in respect of all the Project Facilities under MDOs, as the case may be, or owing any sums whatsoever to Authority under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Authority for or against the Concessionaire under this Agreement or against the Authority in respect of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- b. The decision of the Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire. The Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Authority’s written demand as aforesaid.
- c. In the event of encashment of the Performance Security by the Authority, in full or part, the Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Authority provide a fresh Performance Security or replenish the existing Performance Security to its original value, as the case may be. The provisions of this

Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute an Concessionaire Event of Default, which shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

Section 9.3 Release of Performance Security

Subject to the provisions hereof, the Authority shall promptly return the Performance Security to the Concessionaire upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish the Project Completion being achieved, and provided that there are no outstanding claims of the Authority on the Preferred Bidder/Concessionaire and the Concessionaire is not in breach of this Agreement and has submitted the Bank Guarantee towards the Lease Rental Security and made the timely payments towards the Additional Development Premium and Lease Rental as per the terms of this Agreement, and there are no outstanding payments due from the Concessionaire.

ARTICLE 10 THE OWNERSHIP AND CERTAIN RIGHTS

Section 10.1 Ownership of Assets

a. Land Area

The ownership of the Project Site shall always remain vested with the Authority. The rights of the Concessionaire in the Project Site shall only be that of a Licensee / Lessee as provided in this Agreement. It is clarified for the avoidance of doubt that title to the land shall vest exclusively with the Authority and the Concessionaire shall only have the right to develop and use the same in accordance with the provisions of this Agreement.

b. Assets created or provided by the Concessionaire.

The ownership of all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire in, on, over or under the Project Site pursuant to this Agreement shall, until transfer to the Authority in accordance with this Agreement, be with the Concessionaire.

c. Trees within the Project Site

In case of any trees within the Project Site under the ownership of the Authority, fruit bearing or otherwise, as listed in the Project Site inventory at the time of handing over of the Site, the Concessionaire shall only act as the custodian of such trees, and shall be permitted to enjoy the fruits, if any, during the Concession Period.

For the avoidance of doubt, any tree cutting in the Project Site shall only be with prior written permission of the Authority and respective statutory body and applicable.

ARTICLE 11 INSURANCE

Section 11.1 Insurance Cover

The Concessionaire shall maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders.

a. Construction Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Construction Period (including during demolition works) such insurances as are necessary, including but not limited to the following: -

- i. Construction/builders'/contractors' all risk insurance;
- ii. Erection all risk policy
- iii. Comprehensive third-party liability insurance including injury or death to personnel of the Authority and others who may enter the Project Site;
- iv. Workmen's compensation insurance;
- v. Any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

b. Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against Project Facilities/ Project Assets for:

- i. loss, damage or destruction of the Project/ Project Assets at replacement value or full market value (including fire, burglary, standard and special peril);
- ii. The Concessionaire's general liability arising out of the Concession.
- iii. Liability to third parties; and
- iv. Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

Section 11.2 Evidence of Insurance

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

the Concessionaire's Event of Default and shall be treated as per the provisions laid down under Article 15.

Section 11.3 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly credited the amount to Escrow Account, in accordance with the terms hereof and thereof, the Concessionaire shall apply such proceeds for the repair, renovation, restoration or reinstatement of the Project or any part thereof, which may have been damaged or destroyed and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents

Section 11.4 Distribution of Insurance Proceeds Upon Termination

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

Section 11.5 Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish certified true copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days' clear notice of cancellation is provided to Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority therefore shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Authority by exercising right of set off or otherwise.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

Section 12.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- i. It is duly organized, validly existing and in good standing under the laws of India;
- ii. It has full power and authority to execute, deliver and perform its obligations under this Agreement;
- iii. It has taken all necessary actions to authorize the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- iv. This Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- v. It has the financial standing and capacity to undertake the Project;
- vi. It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

Section 12.2 Further Representations and Warranties of Concessionaire

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

- a. The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Concessionaire is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- b. There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Essential Material Adverse Effect;
- c. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- d. It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- e. No representation or warranty by the Preferred Bidder /Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any

- untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- f. Each Consortium Member/the Preferred Bidder was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - g. Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Concessionaire, during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement, the Concessionaire shall immediately intimate the same to the Authority;
 - h. In submitting its Proposal, the Preferred Bidder/Concessionaire has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
 - i. All rights and interests of the Concessionaire in the Project, the Project Facilities and Project Assets shall pass to and vest in the Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and Encumbrances, without any further act or deed on the part of the Preferred Bidder/Concessionaire or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a Security Interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
 - j. No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Concessionaire to any person by way of commission or otherwise for securing the Concession execution of this Agreement or for influencing or attempting to influence any officer or employee of the Authority.

Section 12.3 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

- a. Agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;
- b. Agrees that any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act or / any analogous legislation ("Exempted Assets") in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);

- c. Consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use subject to (b) above.

Section 12.4 Disclaimer

- a. Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Concessionaire acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Concessionaire has after a complete and careful examination made an independent evaluation of the Project / Project Site, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Authority, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Concessionaire's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Site.
- b. The Preferred Bidder /Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) Above and hereby confirms that the Authority, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Concessionaire or Persons claiming through or under the Preferred Bidder/Concessionaire.
- c. The Preferred Bidder /Concessionaire accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Concessionaire by the Authority, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- d. The Preferred Bidder /Concessionaire shall be solely responsible for the contents of its Proposal, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Concessionaire for implementing the Project.
- e. The Preferred Bidder /Concessionaire is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it

ARTICLE 13 LIABILITY AND INDEMNIFICATION

Section 13.1 Liability of Concessionaire

Notwithstanding anything to the contrary contained in this Agreement,

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

Section 13.2 Indemnification

- a. Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and hold harmless the Authority and its officers, employees, agents, trustees and consultants (each a "Authority Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "Losses") to which the Authority Indemnified Party may become subject, in so far as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Concessionaire or (ii) the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire Person claiming through or under the Concessionaire or (iii) any claim or proceeding by any Third Party against the Authority arising out of any act, deed or thing done or omitted to be done by Concessionaire or (iv) as a result of failure on the part of the

Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessionaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project or the Concessionaire's Contractors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of Project Site and/or construction, operation and maintenance of the Project.

For the avoidance of doubt, indemnification of Losses pursuant to this Article 13 shall be made in an amount or amounts sufficient to restore each Authority Indemnified Party to the financial position it would have been in had the Losses not occurred.

- b. Without limiting the generality of sub-section (a) of this Section 13.2,
- i. The Concessionaire shall fully indemnify and defend the Authority Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Concessionaire and the Persons claiming through or under the Concessionaire to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Concessionaire and the Persons claiming through or under the Concessionaire, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Concessionaire such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Concessionaire or any Person claiming through or under the Concessionaire, which are payable by the Concessionaire or such Person.
 - ii. The Concessionaire shall fully indemnify, and defend the Authority Indemnified Party harmless from and against any and all Losses which the Authority Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Persons claiming through or under the Concessionaire in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Authority Indemnified Party, a permission, at no cost to Authority Indemnified Party, authorising continued use of the infringing work. If the Concessionaire is unable to secure such permission within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing

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

- iii. The Concessionaire shall further indemnify, defend and hold harmless the Authority Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Concessionaire's performance of this Agreement or arising out of any act or omission of the Concessionaire , and in turn of the Persons claiming through or under the Concessionaire .
- c. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

Section 13.3 Indirect or Consequential Losses

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

Section 13.4 Business Risks

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

Section 13.5 Survival

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

ARTICLE 14 FORCE MAJEURE

Section 14.1 Force Majeure Event

Section 14.1.1 Force Majeure Event

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

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

Section 14.1.2 Exceptions to Force Majeure

For the Authority

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

- i. The expropriation, confiscation or nationalization of the Project/Project Facilities/Project Assets by the Authority;
- ii. Any delay or difficulty in handing over vacant possession of the Site.

For the Concessionaire

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

- i. Late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in section 14.1.1;
- ii. Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facilities;
- iii. Delays in performance by the contractors or sub-contractors or employees, agents and representatives of the Concessionaire
- iv. Economic hardship including insufficiency of funds; or general economic slowdown.
- v. Delay in shifting/restoration of utilities/public infrastructure, if any, in the project site as per the DPR.
- vi. Delay in completion of construction period
- vii. Delay in shifting of the demolition works salvage / scrap by the Authority, if opted for.

Section 14.2 Notice of Force Majeure Event

- a. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (“the Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- b. The Notice shall inter-alia include full particulars of:
 - i. The nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - ii. The duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party’s ability to perform its obligations or any of them under this Agreement;
 - iii. The measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damages; and
 - iv. Any other relevant information.
- c. So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for under Section 14.2 (b) and such other information as the other Party may reasonably request.

Section 14.3 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- i. Expiry of the period during which the Affected Party is excused from performance

- of its obligations in accordance with Article 14.4; or
- ii. Termination of this Agreement pursuant to Article 14.7 hereof

Section 14.4 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

Section 14.5 Resumption of Performance

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall extend all reasonable assistance to the Affected Party in this regard.

Section 14.6 Costs, Revised Timetable

a. **Costs**

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

b. **Extension of Time/ Period**

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

Section 14.7 Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 180 days, the Parties may mutually decide to continue this Agreement or terminate this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 days, be entitled to terminate the Agreement in which event, the provisions of Article 16 shall, to the extent expressly made applicable, apply.

Section 14.8 Liability for other losses, damages etc.

Save and except as expressly provided in this Agreement, neither party hereto shall be liable in any manner whatsoever to other party in respect of any loss, damage, cost, expense, claims, demand and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this agreement

ARTICLE 15 EVENTS OF DEFAULT

Section 15.1 Events of Default

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

a. **Concessionaire Event of Default**

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Authority's Event of Default or a Force Majeure Event:

- i. The Concessionaire's and/or Preferred Bidder's is in/commits a Material Breach of this Agreement.
- ii. The Concessionaire's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- iii. Any representation made or warranties given by the Concessionaire/Preferred Bidder under this Agreement are found to be false or misleading.
- iv. The Concessionaire passing a resolution for voluntary winding up.
- v. Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- vi. Levy of an execution or distraint on the Concessionaire assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Concessionaire which would have an or likely to have an Material Adverse Effect on the project or the ability of the Concessionaire to comply with or discharge the obligations and responsibilities under this Agreement.
- vii. Amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking (other than transfer of assets in the ordinary course of business) without the Authority's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Authority, to undertake, perform/discharge the obligations of the Concessionaire under this Agreement, necessary approval shall be granted by the Authority.
- viii. The Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- ix. The Concessionaire repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- x. The Concessionaire has not rectified the default in payment as per the clause 8.3.1. of this Agreement.

- xi. The Concessionaire is adjudged bankrupt or insolvent
- xii. The whole of Project or any part of Project remains closed for an aggregate period of sixty (60) days (except for reasons on account of Force Majeure or Authority's Event of Default).
- xiii. The Concessionaire is in breach or non compliance of any terms and conditions of the Land Lease Deed executed between the Authority and Concessionaire in pursuance of the provisions of this Agreement
- xiv. The Concessionaire committing any breach or non compliance of any of the terms and conditions of the Financing Documents executed between the Concessionaire and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the Security Interest created in their favor under the financing documents, as permitted by this agreement, on the Project Assets and / or the rights and interest under this agreement.
- xv. A change in the shareholding pattern of the Concessionaire has occurred in breach of the provisions hereof.
- xvi. Failure of the Concessionaire to renew/replenish and maintain the Performance Security, in accordance with the provisions of Section 9 hereof.
- xvii. The Concessionaire creates any Encumbrance in breach of this Agreement.
- xviii. Such events as have been specified as Concessionaire Events of Default under the provisions of this Agreement.
- xix. An Escrow Default has occurred and the Developer fails to cure the default within a Cure Period of 15 (fifteen) days.
- xx. Failure to make the Lease Rental Payments and/or Minimum Additional Development Premium Payments for over 3 quarters
- xxi. Failure to make the payment of the differential revenue share within 90 days from its due date, which shall be 90 days from the financial year end.

b. Authority Event of Default

The Authority Event of Default means any of the following events unless such an event has occurred as a consequence of a Concessionaire Event of Default or a Force Majeure Event (the "**Authority Event of Default**"):

- i. The Authority's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of an Concessionaire Event of Default or a Force Majeure Event;
- ii. Any representation made or warranties given by the Authority under this Agreement is found to be false or misleading; any defect in the Authority's title, ownership and possession of the site.

Section 15.2 Parties Rights

- a. Upon the occurrence of the Concessionaire Event of Default, the Authority shall, subject to the provisions of this Article 15, without prejudice to any other rights and

remedies available to it under this Agreement be entitled to terminate this Agreement.

- b. Upon the occurrence of the Authority Event of Default, the Concessionaire shall, subject to the provisions of this Article 15, without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement:

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall

- i. In terms of Clause 15.3 issue a Consultation Notice and follow the Remedial Process in Clause 15.4,
- ii. Give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

Section 15.3 Consultation Notice

Either Party exercising its right under Section 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the “Consultation Notice”).

Section 15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 days or such extended period as they may agree (the “**Remedial Period**”) the Parties shall, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Concessionaire Event of Default, with the prior approval of the Authority and in consultation with the Lenders, the Concessionaire shall endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

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

- v. Assumption by Substitute Entity of any amounts due to the Authority from the Concessionaire under this Agreement.

Section 15.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage caused or suffered on account of the underlying failure/breach.

Section 15.6 Revocation of Consultation Notice

If during the Remedial Period, the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Section 15.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

Section 15.7 Termination Due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Section 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 16 shall, to the extent expressly made applicable, apply.

ARTICLE 16 TERMINATION AND EXPIRY OF AGREEMENT / CONCESSION

Section 16.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing (“Termination Notice”) to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice Period shall not be more than 30 (thirty) days, (“**Termination Period**”) and at the expiry of the Termination Period, this Agreement shall stand terminated.

Section 16.2 Obligations During Termination Period

During Termination Period, the Parties shall subject to the provisions of Article 15 wherever applicable, the operations of the Project shall cease and no financial transactions shall be made by the Concessionaire, except for any Statutory payments or payment of dues to the Authority, including penalty / interest payments, if any applicable.

Section 16.3 Condition Survey

- a. The Concessionaire agrees that six months prior to the expiry of the Concession Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the mutually accepted third party Expert under the Authority’s supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Concessionaire’s obligations under this Agreement and to prepare an inventory of the assets comprised in the Project
- b. If, as a result of the condition survey, the Authority shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions in light of the life of the relevant Project Facility well before the Transfer Date.
- c. In the event the Concessionaire fails to comply with the provisions of sub clause (a) and (b) above, the Authority may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

Section 16.4 Consequences of Termination

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

a. Transfer of Assets

- i. On the Transfer Date, the Concessionaire shall subject to the provisions of this

Agreement:

- A. Transfer, assign and deliver to the Authority or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project Facilities, Project Assets and the Site along with the buildings, facilities and structures constructed on, over, at or under it and its right, and interest in and to the Project the Project Assets.
 - B. Transfer all its rights and interest in or over the tangible assets comprised in the Project (including movable assets which the Authority agrees to take over) to the Authority or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
 - C. Hand over to the Authority or its nominated agency all documents including as building drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
 - D. To the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
 - E. At its cost removes from the Site all such moveable assets which are not taken over by or transferred/assigned to the Authority or its nominated agency. In the event the Concessionaire fails to remove such objects within the stipulated time, the Authority or its nominated agency may remove and transport or cause removal, transportation and storage of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
 - F. The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Site and all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
 - G. The Authority and the Concessionaire shall at least 6 (six) months prior to the expiry of the Concession Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of the Authority shall be associated with the operations of the Project in order to facilitate smooth takeover of the same by the Authority on the Transfer Date.
- ii. It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire shall be taken over by the Authority. All such labour and employees shall be the responsibility of the Concessionaire /such Persons even after the expiry of the Concession Period and they shall have no claim to any type of employment or compensation from the Authority.
 - iii. On the Transfer Date the Project and the Project Assets shall be in fair condition,

subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.

- iv. All contracts, agreements, arrangement's etc entered into by the Concessionaire with its suppliers, service providers, O&M contract's including sub-lease of any built-up area or space in the Project Site, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Authority and if so required by the Authority all monies due and receivable under such agreement shall be recovered and deposited in the relevant Bank Account pending final settlement with the Concessionaire.
- v. If on the Transfer Date, any Person is found to be occupying the Site or any part thereof, other than in respect of the Site/Plot/built up area/unit that has been sub-leased under the Sub-Lease Deeds and the sub-leases/licenses pursuant thereto, the duration of which have been extended by the Authority upon such expiration/prior termination of this Agreement, as provided herein, it shall be lawful for the Authority to secure summary eviction of such Person in accordance with the Applicable Laws.

b. Project Contracts

Authority shall upon its election, succeed, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Contracts from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or refundable security deposits paid to the Concessionaire or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Contracts, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

c. Applicable Permits

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

d. Guarantees

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

e. Transfer of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project and the Project Assets unless the loss or damage

is due to an act or omission of the Authority in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to lie with the Authority

Section 16.5 Vesting Certificate

- a. On the Transfer Date the Authority/Expert shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire's, compliance by the Concessionaire with the requirements of Section 16.4 above. In the event the Authority/Expert notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.
- b. The divestment of all rights and interest in the Project and Project Assets shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 16.5 above shall be fulfilled. The Expert shall on such date issue a certificate substantially in the form set forth in Appendix-11 (the "Vesting Certificate"), with a copy thereof endorsed to the Authority, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights and interest in the Project and the vesting thereof in the Authority or its nominee, as the case may be, pursuant hereto.

Section 16.6 Compensation on Termination

Section 16.6.1 Termination Due to Force Majeure Event

- a. In the event of termination of this Agreement/Concession due to Force Majeure Event or an Event of Default, the Authority shall, upon transfer of the Project, Project Assets and the Site by the Concessionaire to the Authority or its nominated agency in accordance with the provisions hereof, pay to the Concessionaire the following termination payments:

No termination payments shall be payable to the Concessionaire in the event of termination of this Agreement due to an Concessionaire Event of Default or a Force Majeure Event.

Section 16.6.2 Termination Due to Event of Default

- a. Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall not be liable to pay to any Termination Payments the Concessionaire.
- b. The Concessionaire expressly agrees that in case of Termination under this Clause 16.6.2 the Concessionaire or any shareholder thereof shall not have any right or claim under any law, treaty, convention, contract or otherwise.

ARTICLE 17 DISPUTE RESOLUTION

Section 17.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the Termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them, period to resolve such dispute should be within 30 days

Section 17.2 Assistance of Expert

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

Section 17.3 Arbitration

a. Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/ or settlement with the assistance of Expert, as the case may be, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996..

b. Place of Arbitration

The place of arbitration shall be Visakhapatnam, Andhra Pradesh

c. English Language

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

d. Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator/ arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

e. Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

f. Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

g. Performance during Arbitration

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

ARTICLE 18 MISCELLANEOUS PROVISIONS

Section 18.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and, subject to the provisions of Article 17, the courts at Visakhapatnam, Andhra Pradesh and High Court of Andhra Pradesh shall have jurisdiction over all matters arising out of or relating to this Agreement.

Section 18.2 Waiver & Remedies

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

Section 18.3 Survival

The Termination/expiry of this Agreement

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

Section 18.4 Entire Agreements and Amendments

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

Section 18.5 Mode of Delivery of Notices

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

If to Authority:

The Metropolitan Commissioner,
VMRDA,
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530 003

Email:

Attn: The Metropolitan Commissioner

If to Concessionaire:

Email:

Attn:

Or such address, or email as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by email address, when transmitted properly addressed to such email address.

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

Section 18.6 Severability

- a. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- b. The Parties will negotiate in good faith with a view to agreeing upon one or more provisions, which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

Section 18.7 No Partnership

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement.

Section 18.8 Language

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

Section 18.9 Exclusion of Implied Warranties etc.

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

Section 18.10 Counterparts

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

Section 18.11 Further Assurances

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

Section 18.12 Regulatory Framework for Infrastructure Projects

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of Concession related to infrastructure projects is introduced by GoI or GoAP, the Parties shall consult in good faith and

to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Concessionaire hereunder are not adversely affected or additional material liabilities imposed.

Section 18.13 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

Section 18.14 Intellectual Property Rights and Confidentiality

a. Intellectual Property Rights

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

b. Confidentiality

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

- i. Already in the public domain, otherwise than by breach of this Agreement;
- ii. Already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- iii. Obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- iv. Disclosed to the Lenders under terms of confidentiality; or
- v. Which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.
- vi. The Authority needs to provide to the third party applicants under RTI Act.

Section 18.15 Joint and Several Liability of Consortium/Preferred Bidder

In case the Preferred Bidder is a Consortium, the two Persons shall be jointly and severally liable to the Authority for compliance with the terms of this Agreement. The Lead Member shall have the authority to bind the other Member of the Consortium. Except as expressly provided herein, the composition of the Consortium shall not be altered without the prior written approval of the Authority until two (02) years from the date of signing this Agreement or the COD, whichever is later.

Section 18.16 No Liability for Review

Except to the extent expressly provided in this Agreement,

- a. No review, comment or approval by the Authority/Government Authorities/ of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. The Authority or any Government Authority or GoAP shall not be liable to the Concessionaire by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.

- c. In no event VMRDA, or its successor would be vicariously liable during Concession Period.

Section 18.17 Depreciation

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire.

Section 18.18 Assignability

Except as otherwise provided in this Agreement, the Concessionaire shall not assign its rights, or interest in this Agreement in favour of any Persons without prior written consent of the Authority.

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of GoI, GoAP, by the operation of law on such terms and conditions as the Authority may deem appropriate or as may be required by law.

Section 18.19 Interest and Right to Set Off

- a. Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under Law, the Party entitled to receive such amount shall also have the right of set off.
- b. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein the Agreement and if no such period is specified, within 10 (ten) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the 18% (Eighteen percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.
- c. All Supplemental Agreements executed subsequently to fulfil the objectives of the Project, shall essentially become part of this Agreement and shall be read in conjunction with the provisions of this Agreement.
- d. The Concessionaire shall be at sole responsibility in respect of issues arising out of consumer laws and their compliance.

IN WITNESS WHEREOF the Authority, Concessionaire and Preferred Bidder, through their respective authorized officials subscribe their respective signatures and seals hereto on this _____ day of _____ 2023:

Signed, sealed and
delivered by: The
Authorised Signatory
For and on behalf of

Signed, sealed and delivered
by: The Authorised Signatory
For and on behalf of the

VMRDA (Authority)

XXXX Ltd
(Concessionaire)

Name
Designation
Company seal

Signed, sealed and delivered
by: The Authorised Signatory
For and on behalf of the

**(Preferred
Bidder/Confirming Party)**

Name
Designation
Company seal

Witness:

- 1.
- 2.

APPENDICES

Appendix -1

Draft Letter of Award (LOA)

(This will be as issued by VMRDA to the 'Preferred Bidder' upon completion of Bid evaluation process and acceptance of Bid by the VMRDA).

[Date]

[Ref Number]

To

[Preferred Bidder]

[Address]

Kind Attention: [Authorized Representative of Preferred Bidder]

Sub: Letter of Intent (LoI) for Development of a Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis ("Project")

Sir,

1. This is with reference to your Bid dated _____ ("Bid") submitted in accordance with & in response to the Request for Bid document (the 'RFP') released by Visakhapatnam Metropolitan Regional Development Authority (VMRDA), dated _____, towards selection of a private sector entity for Development of a Convention Centre & 5 Star Category Hotel / Resort with other Waterfront Entertainment Facilities on prime land along Beach Road at Visakhapatnam, Andhra Pradesh, India on Public Private Partnership (PPP) Basis (the "Project").
2. For avoidance of doubt, it is hereby clarified that unless otherwise referred hereunder or repugnant to the context or usage thereof, the capitalized terms used under this LOA shall have the meaning as respectively ascribed thereto under the RFP Document and/or the draft Concession Agreement to be executed in terms of the RFP and this LOA
3. We are pleased to inform you that your Bid has been accepted and you have been identified as the Preferred / Selected Bidder for undertaking the implementation of the Project, subject always & exclusively to the terms hereof, the RFP and the Concession Agreement to be executed as per the terms of the RFP and this LOA.
4. It is hereby understood and, for abundant clarity, reiterated that as per your Price / Financial Bid the Additional Development Premium payable to the VMRDA, as per terms of the RFP (including the draft Concession Agreement), shall be as per your Bid. Applicable taxes will be paid by your over and above the said amounts.

5. The Land Lease Rental and Revenue Share shall be paid in accordance with the terms of the Concession Agreement.
6. Further, as per the terms of the RFP, you are requested to comply with and fulfill the following terms and conditions within the time period and in the manner as prescribed hereunder:
 - i. Make the payment of the non-refundable and irrevocable payment of Project Development Fees of **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only)** plus applicable GST, taxes, duties and levies in the form of a demand draft / pay order drawn in favour of “Visakhapatnam Metropolitan Regional Development Authority” drawn on any Nationalized or Scheduled (excluding cooperative) Bank, payable at Visakhapatnam within thirty (30) days from date of issue this LOA.
 - ii. Make the payment of the non-refundable and irrevocable payment of Project Development Fees of **₹2,40,00,000 (Indian Rupees Two Crore Forty Lakhs only)** plus applicable GST, taxes, duties and levies in the form of a demand draft / pay order drawn in favour of “Andhra Pradesh Urban Infrastructure and Asset Management Limited” drawn on any Nationalized or Scheduled (excluding cooperative) Bank, payable at Vijayawada within thirty (30) days from date of issue this LOA.
 - iii. Furnish an Unconditional and irrevocable Construction Performance Security’ Bank Guarantee for an amount of ₹6,00,00,000/- (Rupees Six Crore Only), with a validity of 04 years, in favor of “Visakhapatnam Metropolitan Regional Development Authority” from a Nationalized Bank/ Scheduled Bank (excluding Co-Operative Banks) having an operational branch in Visakhapatnam as per the format appended to the draft Concession Agreement within thirty (30) days from the date of issue of this LOA.
 - iv. Within thirty (30) days from the date of issue of this LOA, pay an amount of ₹ (Rupees Only) equivalent to the first three months Lease Rental (computed on the basis of the Annual Lease Rental payable in the first year of Concession), in the form of a bank draft (irrevocable demand draft) drawn on any Nationalized Bank / Scheduled Bank (excluding Co-Operative Banks) in favor of “Visakhapatnam Metropolitan Regional Development Authority” payable at Visakhapatnam, towards the first quarterly installment of the Annual Lease Rentals, during the term of the Concession Agreement in accordance with the terms thereof.
 - v. Incorporate a Special Purpose Company (SPC) under the provision of Companies Act, 2013, with the equity shareholding as prescribed in the RFP, to act as the Concessionaire for executing the Concession Agreement and implementing the Project in accordance with the terms thereof, within thirty (30) days from the date of issue of this LOA.

Please note that your firm’s failure or inability to fulfill any of the requirements stipulated in para Six (6) above shall render your Bid liable for rejection/disqualification and forfeiture of the Bid Security furnished by you and this LOA shall stand withdrawn.

7. After absolute & unconditional fulfilment of the conditions mentioned hereinabove and in addition thereof, you are requested to also execute and cause execution of the Concession Agreement with the VMRDA, in the format attached as Section of the RFP Document.
8. In addition to the above, you shall, throughout the Concession Period, be under an obligation to unconditionally comply and ensure unconditional compliance by the Concessionaire, as the case may be, with all the requirements of the RFP as well as the terms of the Concession Agreement
9. It may also be noted that in the event of any failure to comply with any one or more of the terms and conditions mentioned in this LOA and/or the RFP document within the time and in accordance with the manner prescribed thereof, including without limitation the acceptance of this LOA, the VMRDA shall, in addition to all other rights and remedies that may be available to it under the provisions of the RFP, this LOA, law and equity or otherwise, at its absolute discretion be entitled to treat your Bid as rejected and unilaterally cancel/revoke this LOA and deal with the captioned Project as it may deem fit in our sole and absolute discretion.
10. In such an event the Preferred Bidder (or any person claiming under it) shall have no claim or demand against the VMRDA (or any of their Affiliates), of any nature whatsoever. Further, under any circumstances, the VMRDA (or any of their Affiliates), shall not be liable or responsible to the Preferred Bidder or to any other entity whomsoever, for any loss of business, business competition, loss of investment, or any other loss or damage, costs or expenses, for any reason whatsoever. The Preferred Bidder (or any person claiming under it) shall not be entitled to claim any direct or indirect damages, costs, expenses for loss of business, loss of investment etc., upon rejection of its Bid or cancellation/revocation of this LOA, howsoever and whatsoever caused.
11. The Preferred Bidder shall indemnify and keep indemnified the VMRDA, (or any of their Affiliates), its respective directors, consultants, contractors, officers, employees and/or agents, against all claims and loss, that they may suffer/ sustain or are likely to suffer/ sustain, due to or in relation to all/ any acts and omissions of the Preferred Bidder, its employees, staff, personnel etc. pursuant to or in relation to this LOA, the RFP or the Concession Agreement.
12. Notwithstanding anything to the contrary contained hereinabove, the arbitration clause here-under shall be a final and binding agreement between the VMRDA and the Preferred Bidder and shall survive the cancellation/ revocation /annulment of this LOA:
 - i. Any and all disputes controversy or claim, relating to or arising out of the LOA or the rights and obligations of the VMRDA and the Preferred Bidder, under this LOA, including but not limited to validity, interpretation, scope, effect, termination of the terms contained in this LOA, shall be settled by arbitration by a sole arbitrator to be appointed by the VMRDA or his nominee within thirty (30) days after receipt of a request for appointment of arbitrator, which notice should contain all information regarding the dispute(s) between the parties.
 - ii. The arbitration shall be conducted in accordance with the Arbitration and Conciliation At, 1996 as amended. The venue of arbitration shall be at

Visakhapatnam, Andhra Pradesh, India and it shall be conducted in the English language.

- iii. The arbitral award shall be in writing, state the reasons for the award and be final and binding on the VMRDA and the Preferred Bidder. The award may include an award of costs, including reasonable attorney's fees and disbursements.
13. The LOA shall be governed by the laws of India and in relation to all matters arising out or relating to this LOA, the courts at Visakhapatnam, Andhra Pradesh, India shall have exclusive jurisdiction.
14. It may additionally be noted that this LOA by itself does not create any rights or contractual relationship with the VMRDA or casts any corresponding obligation with respect to the Project or otherwise on the VMRDA. Any such right or relationship shall come into effect only upon your unconditional compliance with terms conditions set out herein and the execution of the Concession Agreement as per term hereof and the RFP.
15. Without prejudice to anything stated in this LOA and/or the RFP, you are hereby requested to return the duplicate copy of this Letter of Intent within seven (7) days from the date of this Letter of Intent, as a token of the receipt & acknowledgement of this LOA.

Thanking You

For & on behalf of VMRDA

AGREED, ACKNOWLEDGED & ACCEPTED BY

We, the Single Bidder / Consortium of _____ (the 'Preferred Bidder'), duly represented by (the 'Lead Member'), do hereby acknowledge the receipt of the LOA and undertake to absolutely and unconditionally comply with the terms and conditions contained herein.

SIGNATURE: _____

NAME OF AUTHORIZED. SIGNATORY:

DESIGNATION: (the 'Single Bidder/Lead Member')

Appendix -2

Consortium Agreement

[As furnished by the Preferred Bidder along with the Request for Proposal (RFP) Application]

Appendix -3

“Minimum Development Obligations (MDOs) / Project Facilities” **(as per RFP)**

1. Convention Centre with not less than 5 Star Category Hotel / Resort

Within Thirty Six (36) months* of the Agreement date, following shall be implemented:

- **A Convention Centre comprising:**
 - a) Multi-purpose Convention Hall, air-conditioned Main Hall (with the ceiling of minimum 15 feet high; area to accommodate minimum 2500 persons in theatre-style seating)
 - b) This multi-purpose hall shall have no fixed seating and shall be with partitions for flexibility in conducting multiple events simultaneously.
 - c) The multi-purpose hall must be capable of hosting and catering to Meetings, Events, Exhibitions of National & International level.
- **Not less than 5 Star category Hotel comprising:**
 - a) Not less than 200 guest rooms
 - b) Obtain not less than 5 Star category certification from the Hotel and Restaurant Association Classification Committee (HRACC), Ministry of Tourism, India, within 180 days of commencement of operations.

2. Other Water Front Entertainment Facilities:

Within Thirty-Six (36) months* of the Agreement date, following shall be implemented:

- **Water Front Entertainment Facilities (in the form and manner as permissible under the applicable CRZ Norms) such as:**
 - a) Shack Restaurant(s), Café(s) (with temporary structures / canopies, etc.)
 - b) Party Lawns with landscaping / hardscaping (including Amphitheatre, etc) for outdoor events.
 - c) Flea Market
 - d) Exhibition Venue

The above specified MDOs are subject to the Applicable Development Control Regulations as applicable from time to time.

Further, in addition to the MDOs, the Concessionaire shall be permitted to develop any other additional tourism facilities as listed in the Andhra Pradesh Tourism Policy 2020-2025 (in the form and manner as permissible under the applicable CRZ Notification)

*In case any of the MDOs that are currently not permissible as per the currently applicable Development Control Regulations / applicable CRZ Notification, the timeline for the implementation of the same shall commence from the date of such amendment / notification permitting the same.

Appendix -4

- A. **“Development Controls”**
- B. **“Specifications & Standards”**
- C. **“Maintenance and Performance Standards”**

(All the above as specified in the Section III of RFP)

Appendix -5

Off-site Infrastructure

The site is abutting the Main Road and no additional external connectivity is required. However, the internal approach road shall be widened by the Concessionaire at its own cost, as per the demarcation provided by VMRDA.

Other Offsite infrastructure such as power, water etc. is being provided by different agencies like Municipal Corporation, APPDCL etc. The Concessionaire is required to apply to the concern Authorities and obtain the necessary approvals for services/connections on his own. The Authority will extend all necessary support to the Concessionaire based on written request of the Concessionaire in this regard on best effort basis.

Appendix -6

“Project Site” or “Site”

Appendix -7

“Scope of Work”

- a. Planning and development of the Project
- b. Design, Finance, Construct, Market, Operate & Maintain the Project to meet the Performance Standards, Specifications, Good Industry Practices as stipulated in the RFP including Concession Agreement
- c. Technical and Financial closure of the Project
- d. Obtaining required clearances/approvals for commencing and implementing the Project from Government of Andhra Pradesh and/or Government of India, their agencies and any other authorities.
- e. Procure, install and commission all machinery and equipment and complete construction of the works within the stipulated time frame.
- f. Implement the Environmental Management Plan (EMP), as required during construction and operational phases.
- g. Award of Project contracts in respect of development of the Project Site, sub-lease, license and other conveyance of the built-up area/units, engineering, procurement, construction, operation and maintenance of the Project and installation, erection, provision of the Project Facilities
- h. Transfer of Project Assets/Project Facilities at the end of Concession Period or early Termination to Authority as stipulated in the Concession Agreement.
- i. Take all necessary measures and actions for safe and secure implementation of the Project during construction and operation.
- j. Any other work, activity as required for successful implementation of the Project.

Appendix -8

Draft Land Lease Deed

For Development ofFacility in, Andhra Pradesh

THIS LAND LEASE DEED is made on this _____ day of 2023 at _____

By and Between

Visakhapatnam Metropolitan Regional Development Authority (VMRDA), having its Office at Siripuram Junction, Udyog Bhavan, Visakhapatnam, Andhra Pradesh 530003. and being represented herein by its Metropolitan Commissioner (authorized in this behalf) (hereinafter referred to as “**VMRDA**” or the “**Authority**” which expression shall, unless it be repugnant to the context or meaning thereof, include its subsidiaries, successors and assigns) of the **FIRST PART**;

And

M/s _____, a company incorporated under the Companies Act, 2013, having its Registered Office at _____, India, represented by _____ hereinafter referred to as the "Concessionaire" or the “Lessee” (which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the **SECOND PART**.

And

M/s _____, a company incorporated under the Companies Act, 2013, having its Registered Office at _____ India, represented by hereinafter referred to as the "Preferred Bidder / Confirming Party" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **THIRD PART**

Each singly a “**Party**” and collectively the “**Parties**” WHEREAS:

- A. The **Visakhapatnam Metropolitan Regional Development Authority**. (“**VMRDA**” or the “**Lessor**” or “**Authority**” herein), is the absolute owner of, _____ more particularly described in Schedule-1 hereunder and shown on the site plan annexed thereto (hereinafter the “**Project Site**”).
- B. Pursuant to the Concession Agreement dated [insert], the VMRDA had granted to the Concessionaire the right to undertake the development of Project upon the Project Site in accordance with the terms and conditions thereof.
- C. In lieu of the Concessionaire agreeing to make payment of Annual Lease Rent to the VMRDA in terms of the Concession Agreement, the Concessionaire has requested the VMRDA for the grant of lease of the Project Site admeasuring 7.97 acres in accordance

with and for the purpose set forth in the Concession Agreement.

- D. Therefore, for purposes of and in accordance with the provisions of the Concession Agreement, the Concessionaire proposes to take on lease from the VMRDA and the VMRDA proposes to lease to the Concessionaire, the Project Site on the terms and conditions set out herein.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. The words and phrases used in this Deed but not defined shall, unless the context otherwise requires, have the meaning assigned to them respectively in the Concession Agreement.
2. The interpretation Section 1.2 of the Concession Agreement shall be deemed to be incorporated in this Deed in extenso mutatis mutandis.
3. The following terms shall, except where the context otherwise requires, have the meaning as hereunder:
 - i. Deed or Lease Deed means this Project Site Lease Deed, schedules to it, as amended or modified by the Parties in accordance with the provisions hereof,
 - ii. Concession Agreement shall mean the Concession Agreement dated entered into between the Authority (the Lessor herein) and the Concessionaire (the Lessee herein) with the Preferred Bidder as the confirming party thereto;
 - iii. Concession Period means the period specified under Section 2.2 of the Concession Agreement;
 - iv. Demised Premises means all the lands comprising the Project Site, i.e. 7.97 acres of land, more particularly delineated in Schedule-1 attached hereto;
 - v. Lessor means VMRDA or the Authority or its successors;
 - vi. Lessee means the Lessee or the Concessionaire; and
 - vii. Schedules means any of the schedules and supplements hereto.
4. As a part of and in consideration of entering into the Concession Agreement, and the covenants and warranties on the part of the Lessee therein and herein, the Lessor, in accordance with the terms and conditions set forth herein, hereby, demise to the Lessee, commencing from the date hereof, the leasehold rights in all the land comprising the Project Site without interruption or interference, free from encumbrances and together with the full and free right and liberty of way and passage, easements, right of way/way leaves and other rights in relation thereto with delivery of Vacant Possession thereof, for a period that shall be co-terminus with the Concession Period and shall be extended or terminated at a prior date to coincide with the Concession Period. The Lessor hereby undertakes that it shall not terminate this Deed extent the lease term in accordance with the provisions of this clause, except upon the due and valid termination of the Concession Agreement or the breach of any of the terms and conditions of this lease deed by the Lessee.

5. The Lessor hereby vests the Project Site with the Lessee with effect from the date hereof along with all easements, free from any encumbrances. Provided that the Lessee shall at its cost be required to remove the utilities including any power transmission lines and structures at, over or under the Demised Premises as per the provisions of the Concession Agreement and the Lessor shall render the necessary facilitation in this behalf.
6. In consideration for the lease of the Project Site by the Lessor to the Lessee, the Lessee shall
 - viii. Effective from the date hereof and during the Concession Period, pay Lease Rental to the Authority as per the RFP conditions, by way of a demand bank draft drawn in favour of Lessor on a Nationalized/Scheduled (Excluding Cooperative) bank having a branch at Visakhapatnam, Andhra Pradesh.
 - ix. The Annual Lease Rental for the first year of Concession is in an amount of ₹ _____. The amount of Annual Lease Rental shall be escalated at the rate of 5% every three year during the Concession Period.
 - x. The Annual Lease Rentals shall be paid in advance in equated quarterly instalments, by the 10th day of the first month of every quarter during each Accounting Year of the Concession Period in accordance with the Lease Rental payment schedule attached hereto as Schedule 2.
 - xi. The Annual Lease Rental payable in the first year of the Concession shall be computed and paid proportionately for the period from the Execution Date till the immediately following 31st March. The Annual Lease Rental for the last year of the Concession shall be paid proportionately for the period from 1st April of the relevant year till the Transfer Date.
 - xii. An amount of Rs.(Rupeesonly) equivalent to the first Three months Annual Lease Rental (computed on the basis of the Annual Lease Rental payable in the first year of Concession) of the Concession Period, has been deposited by the Preferred Bidder/ Concessionaire, with the Authority within 30 days of issue of LoI and prior to the Execution Date, as the advance lease rental for the 1st Quarter. Further, towards the security for the due payment of the Annual Lease Rentals during the Concession Period, the Concessionaire shall ensure that it maintains, at all times during the Concession Period, a deposit with the Authority of an amount equal to 1-year advance Lease Rentals calculated on the basis of applicable Annual Lease Rental for that particular year (“Security Deposit”).
 - xiii. The Security Deposit shall be returned to the Concessionaire, without any interest thereon, within three (3) months from the Transfer Date, after adjusting dues of the Concessionaire if any to the Authority or towards any payment obligations pertaining to the Project, like power, water, maintenance etc.
 - xiv. In the event of delay up to 15 days from the due date (10th day of the first Month of the quarter) in the payment of the Lease Rentals, the Concessionaire shall be liable to pay to the Authority, interest on the due amount at the rate of 18% (Eighteen percent) per annum, for the period from the first day of the next quarter until the date of actual payment.

- xv. In the event, the payments are delayed beyond a period of 3 quarters, it shall be construed as a Concessionaire default in payment of Lease Rentals. The Authority shall terminate the agreement with the Concessionaire for failure to make the lease payments for over 3 quarters, as per the terms of Agreement.
7. The Lessor hereby vests the Demised Premises with the Lessee under this Deed for the purpose of implementing the Project, including the design, finance, construction, provision and operation and maintenance of the Project Facility in accordance with the terms and conditions of the Concession Agreement and the applicable development guidelines.
8. Subject to the provisions of the Concession Agreement in this behalf, the Lessee shall not transfer, assign, sub-lease, part with possession of or create any Encumbrance on the Project Site, Project Facilities, Project Assets and its rights hereunder, to any person, except to the extent provided for in the Concession Agreement.
9. Upon the occurrence of an Concessionaire Event of Default under the Concession Agreement, the Parties shall in consultation with the Lenders and in accordance with the provisions of the Concession Agreement have the right to replace the Lessee by the Substitute Entity for performing the Lessee's obligations hereunder. Upon appointment of the Substitute Entity, the Substitute Entity shall be deemed to be the Lessee for all the purposes and shall be entitled to all the rights and be bound by all the representations, covenants and obligations of the Lessee contained herein.
10. In the event of Termination of the Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Demised Premises and all sub-leases of built up areas, Concessions and rights in relation thereto shall be determined, the Lessee and Persons claiming through or under it (including without limitation the Contractors, and Contractual Counter Parties to the Contractual Arrangements including the sub-lessees of built up areas, Concessions, franchisees etc. and the persons claiming through or under them) shall hand over the vacant possession of the Demised Premises to the Lessor or its nominated agency and forthwith vacate the Demised Premises without any demur or delay.
11. The Lessor hereby covenants with the Lessee as under:
- i. That the lease rental due and payable by the Lessee as per the Section 8.2.3 of the Concession Agreement and as per the Schedule- 2 annexed herewith
 - ii. That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose conditions in relation to: (i) the complete, free and full enjoyment of the Demised Premises by the Lessee for the purpose of the implementation of the Project and all rights related thereto; (ii) the design, construction, operation and maintenance of the Project Facility; (iii) the implementation of the Project Facility by the Lessee; and (iv) the possession, control and use by the Lessee of the Demised Premises, the facilities constructed thereon and any other facilities developed in the course of implementation of the Project; provided that the same are in compliance with the terms and conditions of the Concession Agreement and this Deed.
 - iii. That it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement in accordance with the provisions thereof or upon any

breach of any of the terms and conditions of this lease deed by the lessee; and

- iv. That there are no litigations, claims, demands or any proceedings pending before any VMRDA in respect of the Demised Premises or in respect of any other land-dispute, and that the Lessee shall have complete, lawful and uninterrupted possession, control and use of the Demised Premises.

12. The Lessee hereby covenants with the Lessor as follows:

- i. That it shall develop, establish, design, construct and operate and maintain the Project Facility at the Demised Premises as per its obligations under the Concession Agreement;
- ii. That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed;
- iii. That it shall keep the Demised Premises free from encroachments during the Concession Period and operate and maintain and carry out repairs in accordance with the provisions of the Concession Agreement;
- iv. That in respect of the Demised Premises/built up areas there at /its business activities there at/relating to the Project, it shall pay all municipal rates, levies, taxes including property tax, rents, including penalties etc. for late payment, at the applicable rates from time to time, to the concerned Government Authorities and be liable for payments of all rates and charges for the use of utilities and services at the Demised Premises; and
- v. The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Lessor under the land Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute an Concessionaire Event of Default under the Concession Agreement. Provided that the Concessionaire shall be entitled to sub-lease the built up areas constructed by it at or on the Project Facility and to enter into Contractual Arrangements subject to and in accordance with the terms and conditions of the Concession Agreement and this lease deed and the same shall be co-terminus with this lease deed.

13. Each Party hereto represents and warrants that:

- i. It has full power and VMRDA to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
- ii. It has taken all necessary actions to authorise the execution, delivery and performance of this Deed; and
- iii. This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.

14. Power to inspect

- i. The Lessee shall permit the Lessor and its duly authorised representative to enter upon the Project Site and the works or structures for the time being constructed or

standing thereon to view and inspect the same and, if any defect is found and brought to the notice of the Lessee, without the VMRDA being obliged to do such inspection or to intimate such defect, the Lessee shall remedy or make good the defect within such reasonable time as may be specified by the Lessor.

- ii. No such inspection or communication of comments or non-communication of comments by the VMRDA shall amount to validation or approval or acceptance by the VMRDA of the construction by the Concessionaire or its confirmation to the Applicable Law, Applicable Permits and the terms of this Concession Agreement or waiver by the VMRDA of any breach by the Concessionaire. It shall be the obligation of the Concessionaire alone to supervise the construction and to ensure that the construction is being carried out in conformity with the Applicable Law, Applicable Permits and the terms of the Concession Agreement.

15. Lessee not Lessor's Agent

Nothing in this Lease Deed, whether express or implied, constitutes the Lessee as the agent of the Lessor in respect of any matter or action taken, or vice-versa.

16. The Parties agree that

- i. The failure of the Lessee to perform its obligations under this Deed and any breach of covenants or undertakings given and provided for in this Deed by the Lessee shall amount to an Concessionaire Event of Default under the Concession Agreement.
- ii. Any dispute, controversy or claim arising out of or in relation to this Deed or the interpretation of any of its provisions shall be settled in accordance with the provision of Article 17 of the Concession Agreement.
- iii. The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Lessee.
- iv. All notices under the terms of this Deed shall be sent either by hand, facsimile or courier to the following addresses:

Lessor : To
The Metropolitan Commissioner
Visakhapatnam Metropolitan Regional Development Authority,
Siripuram Junction, Udyog Bhavan,
Visakhapatnam, Andhra Pradesh 530003
Ph:
Email:

Lessee : M/s _____

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

Signed, sealed and delivered by:

The Authorised Signatory For and on behalf of

Visakhapatnam Metropolitan Regional Development Authority. (Authority)

Name & Designation

Signed, sealed and delivered by:

The Authorised Signatory For and on behalf of the

XXXXXX Pvt Ltd Pursuant to Resolution dated. of its board of directors

Name & Designation

Signed, sealed and delivered by:

The Authorised Signatory For and on behalf of the

XXXX Ltd (Preferred Bidder/Confirming Party)

Name & Designation

Company Seal Witness 1.)	Company Seal Witness 1.)	Company Seal Witness 1.)
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Date :

Place:

Schedule – 1

Demised Premises

(To be provided at the time of signing the Concession Agreement)

Schedule – 2

Schedule of Lease Rentals (Rs. in Lakhs)

Lease Years	Annual Lease Rental	<u>Quarterly Yearly Lease Rental Payable</u>				<u>Advance Lease Rentals</u>
		<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	
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Appendix -9

List of Applicable Permits

The lists of applicable permits include (but not limited to):

1. APCZMA / MoEF for CRZ clearance
2. Consent to establish and operation under Water Act, 1974 and Air Act, 1981
3. Environmental Clearances
4. Clearances from Factories and Labour Departments.
5. Registration under Sales Tax Act, 1976
6. Power connection by APPDCL
7. All Trade Licenses as applicable.
8. GST Registration
9. GVMC Property Tax
10. Approval/permit from Fire Safety Authorities
11. Building Layout and other permissions required from Statutory regulatory bodies
12. Water and Sewerage Connection
13. Occupancy Certificate/ any other certificate issued by concerned authority permitting commercial operations in the facility
14. Immigration clearance (in case of foreign personnel being engaged)
15. Liquor License, if required
16. All other relevant statutory approvals/permits for construction, Operation and Management of Project Facilities.

Appendix -10

TOR for Independent Engineer / Consultant

1. The Authority, at his discretion, shall hire the services of a consulting engineering firm/company of engineers having the requisite experience in similar projects through a competitive bidding process to be the independent consultant under this Agreement (the “Independent Engineer/Consultant”). Such appointment shall be made no later than three months from the date hereof and shall continue for a period until issuance of Completion Certificate.
2. In the event the Concessionaire has reason to believe that the Independent Engineer/Consultant is not discharging its duties and functions in a fair, efficient or diligent manner, it may make a written representation to the Authority, supported with necessary documents and specific instances of causes and grievances and seek termination of the appointment of such consultant. Within 7 (seven) working days of the date of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and such consultant for resolving the matter amicably and giving a fair hearing to such consultant. In the event the matter is not amicably resolved within 7 (seven) days of such meeting, the appointment of the Independent Engineer/Consultant shall be forthwith terminated; provided that prior to such termination the Authority shall have appointed another Independent Engineer/Consultant to replace the existing one.
3. The replacement of the Independent Engineer/Consultant shall be effected so as to maintain the continuity in supervision and monitoring of construction of the Project by it

4. Scope of Work

The Scope of Work for the Independent Engineer/Consultant shall include: -

- i. Review of the Designs and Drawings submitted by the Concessionaire to ensure that they are in accordance with the development proposal submitted by the Concessionaire in this DPR.
- ii. Certification that the Designs and Drawings indicate that the works are suitable for their intended purpose. The Independent Engineer/Consultant shall advise this approval of the Designs and Drawings to the Authority and the Concessionaire within period stipulated in the Agreement.
- iii. Independently review, monitor and where required by the Agreement, to approve activities associated with the design, construction, operation and maintenance of the Project facilities to ensure compliance by the Concessionaire with the Concession Agreement and the Approved DPR.
- iv. Approval of DPR and report to the Authority, objections or corrections required in order to implement the project as per the provisions of the Concession Agreement and Good Industry Practices.
- v. Ensuring that the provisions of the Designs and Drawings and the Approved DPR do not adversely obstruct any development plans of the Authority, as and if

provided by the Authority at the time of approval of the Designs and Drawings and the approved DPR.

- vi. Upon request of the Concessionaire on completion of construction of various phases as set out in the Concession Agreement, carry out inspections to ensure that a part of the Project Facility has been constructed as per the provisions of the Concession Agreement and the Approved DPR.
 - vii. In addition to above, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Concession Agreement.
 - viii. In case the Concessionaire proposes any i) deviation to the Drawings or ii) submits any Drawings required but not included in the DPR, the Independent Engineer/Consultant shall review the same to ensure conformity with the Project / Design Requirements.
 - ix. Review the following submitted by the Concessionaire on behalf of the Authority:
 1. Project Concept and Components, Capacity & Area Statement
 2. Environmental Management Plan (if any)
 3. Project Implementation Plan
5. During the Construction Phase, the Independent Engineer/Consultant would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the construction requirements. For this purpose the Independent Engineer/Consultant shall undertake, inter-alia, the following activities and where appropriate make suitable suggestions:
- i. Monitor the progress in implementation of the project based on the Implementation and Investment Plan submitted by the Concessionaire review and approve designs and drawings with consent of the Authority for various works related to the project.
 - ii. Review and monitor the quality assurance and quality control procedures followed by the Concessionaire.
 - iii. Review the manpower and equipment deployed by the Concessionaire.
 - iv. Monitor the Construction works for conformity with the Approved DPR.

6. Meetings, Records and Reporting

- i. The Independent Engineer/Consultant would be required to participate in the project review meetings held from time to time by the Parties, as also to participate in emergency or extraordinary meetings of the Parties held to deal with any emergency, Force Majeure event or other exigencies.
- ii. The Independent Engineer/Consultant shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities and submit periodic reports to the Authority.

- iii. The Independent Engineer/Consultant shall share all the information, data and records collected by it and/or available with it in relation to the discharge of its functions and responsibilities, with an authorised person designated by the Authority in this regard.
- iv. The Independent Engineer/Consultant shall convey to the Authority and the Concessionaire the justifications in writing for its decisions in the course of discharging its functions and responsibilities.
7. Review and monitor the Equipment Procurement Plan, the Equipment Replacement Plan, Waste Management and Safety Plan.
8. Review of procurement procedure by EPC contractors and equipment suppliers. Review and monitor the transfer of assets and scope of transfer.
9. Any other activity as mentioned in the Concession Agreement and as required

Appendix -11

Vesting Certificate

The divestment of all rights and interest in the Project “Development of
.....Facility in on PPP Mode” shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Expert shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Section 16.6 (the “Vesting Certificate”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on or in respect of the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Appendix -12

GUIDELINES FOR THE COMPUTATION OF DEPRECIATED HISTORICAL COST

1. The Depreciated Historical Cost (“DHC”), wherever applicable, shall be computed based on the following norms:

The depreciation shall be calculated on straight-line basis. The depreciation rates shall be in accordance with the provisions of the Companies Act 1956/2013, as may be amended from time to time

2. The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
3. Wherever Book Value or Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Concessionaire, to the satisfaction of the Authority, with Chartered Accountant's, Public Accountant's and valuer's certificates and duly supported by bills and other documents of manufacturers/suppliers/ civil works contractors, at the time of installation of the new assets or replacement of the assets as the case may be.

Appendix -13

Undertaking on Land Title

(To be provided by the Concessionaire saying his satisfaction over the land title and required documents shown by the Authority)

(To be obtained from SPC)

Appendix -14

Format for

PERFORMANCE GUARANTEE

(On requisite Stamp Paper)

In consideration of the VMRDA (hereinafter called "the Authority") having agreed to exempt (hereinafter called "the Concessionaire") from the demand, under the terms and conditions of Letter of Award (LOA) issued in respect of the "Development of project on Build, Operate and Transfer (BOT) on.....acres of land, and subsequent Concession Agreement being signed between Concessionaire and VMRDA for performance of the Agreement to be made (hereinafter called "the said Agreement"), for the due fulfillment by the said Concessionaire of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs.(Rupees.....Only).

We, (hereinafter referred (indicate the name of the bank) to as "the Bank" at the request of Concessionaire do hereby undertake to pay to the VMRDA an amount not exceeding Rs.....against any non fulfillment of the obligations of the Agreement or loss or damage caused to or suffered or would be caused to or suffered by the VMRDA by reason of any breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement.

We (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, hereby on a demand from the VMRDA stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the VMRDA by reason of breach of any terms and conditions contained in the said Agreement by the said Concessionaire of any of the terms or conditions contained in the said Agreement or by reason of the Concessionaire failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding ₹6,00,00,000/- (Rupees Six Crore only).

We undertake to pay to the VMRDA any money so demanded notwithstanding any dispute or disputes raised by the Concessionaire in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment hereunder and the Concessionaire shall have no claim against us for making such payment.

We,.....(indicate the name of bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the VMRDA under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the concerned officer of the VMRDA certifies that the terms and conditions of the said Agreement have been fully and properly fulfilled/carried out by the said Concessionaire and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before (indicate the date-Three years from the date of signing Agreement), we shall be discharged from all liability under this guarantee thereafter.

We, _____ (indicate the name of bank) further agree with the VMRDA that the VMRDA shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Concessionaire from time to time or to postpone for any time or from time to time any of the powers exercisable by the VMRDA against the said Concessionaire and to for bear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Concessionaire or for any forbearance, act or omission on the part of the VMRDA or any indulgence by the VMRDA to the said Concessionaire or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

This Guarantee will not be discharged due to the change in the constitution of the Bank or the Concessionaire.

We, _____ (indicate the name of bank) undertake not to revoke this guarantee during its currency except with the previous consent of the VMRDA in writing.

The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to VMRDA a sum of ₹6,00,00,000/- (Rupees Six Crore only). without any protest or demur and upon receipt of first written demand from VMRDA to our _____ Branch at Visakhapatnam, Andhra Pradesh. This Guarantee is independent of the terms and conditions of the Concession Agreement and its validity.

Dated the _____ day of _____ (Month & Year) for _____ name of the Bank).

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this _____ day of _____ and year first herein above written.

Signed and delivered by the above named _____ Bank by its Authorized Signatory as authorized by

Board Resolution passed on /Power of Attorney dated []

Authorized Signatory Name : Designation:

In the presence of:

- 1.
- 2.

Appendix -15

Format for Escrow Agreement

THIS ESCROW AGREEMENT is entered into on this the _____ day of _____ 2023

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at (herein after referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (name and particulars of Lenders’ Representative) and having its registered office at..... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. (Name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. **Visakhapatnam Metropolitan Regional Development Authority (VMRDA)**, having its Office at Siripuram Junction, Udyog Bhavan, Visakhapatnam, Andhra Pradesh 530003 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS

- A. The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for Development of.....Facility in on PPP Basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

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

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

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

- 2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

- 2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Compliance Date, the Concessionaire shall open and establish the Escrow Account with the.....**** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time

2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5. Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6. Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a. All monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- b. All funds received by the Concessionaire from its share-holders, in any manner or form;
- c. All Fee levied and collected by the Concessionaire;
- d. Any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and

e. All proceeds received pursuant to any insurance claims.

3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a. Grant and any other monies disbursed by the Authority to the Concessionaire;
- b. Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3. Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4. Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate there from the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Concession Period

4.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

- a. All taxes due and payable by the Concessionaire for and in respect of the Project;

- b. All payments with respect to the Annual Lease Rental and the Revenue Share in terms of the Concession Agreement;
 - c. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - d. O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
 - e. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;
 - f. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - g. Any reserve requirements set forth in the Financing Agreements; and
 - h. Balance, if any, in accordance with the instructions of the Concessionaire.
- 4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a. All taxes due and payable by the Concessionaire for and in respect of the Project;
- b. Outstanding Revenue Share and Lease Rental;
- c. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement and any claims in connection with or arising out of Termination;
- d. Outstanding Debt Service including the balance of Debt Due;
- e. Incurred or accrued O&M Expenses;
- f. Balance, if any, in accordance with the instructions of the Concessionaire:

4.3. Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of his Suspension. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2. Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a. May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b. May, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

- c. Shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d. Shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1. Escrow Default

- 6.1.1. Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:
 - a. The Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
 - b. The Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
 - c. The Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.
- 6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1. General indemnity

- 9.1.1. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1. Dispute resolution

- 10.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such

arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2. The arbitral award shall be in writing, state the reasons for the award and be final and binding on the Parties. The venue of arbitration shall be Visakhapatnam, Andhra Pradesh and the language of the arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

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

11.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3. Priority of agreements

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

11.4. Alteration of terms

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

11.5. Waiver

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

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

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

11.6. No third party beneficiaries

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

11.7. Survival

11.7.1. Termination of this Agreement:

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

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

11.8. Severability

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

resolution under Clause 10.1 of this Agreement or otherwise.

11.9. Successors and assigns

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

11.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11. Language

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

11.12. Authorised representatives

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

11.13. Original Document

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

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

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

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

<p>SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by the Lenders' Representative:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by the Lenders' Representative:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.)</p>
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In the presence of:

1.

2.

Appendix -16

Additional Development Premium (ADP) Quoted by the Preferred Bidder

The Additional Development Premium quoted for each year and quarterly computation for Minimum Assured Amount is as below:

Column (1)	Column (2)		Column (3)	Column (4)	Quarterly Yearly Minimum Share Amount (2a /4) (5)			
	Column (2) (a)	Column (2) (b)			Q1	Q2	Q3	Q4
Year (for the avoidance of doubt, 1 st Year of Operations shall be Year 4 of Concession Period, where year 1 to 3 of Concession Period shall be Construction Period)	ADP in terms of Minimum Share of Gross Annual Turnover to be quoted by the bidder subject to a minimum of that given in column 3 in Absolute Terms (Amount in ₹)	% of Gross Annual Turnover, subject to minimum of that given in column 4	ADP in terms of <u>Minimum Share of Gross Annual Turnover</u> (Amount in ₹)	ADP in terms of <u>Minimum Share of Gross Annual Turnover</u> in Percentage Terms to be quoted				
Construction Period Year 1	-	-	-	-				
Construction Period Year 2	-	-	-	-				
Construction Period Year 3								
1	{2(a)(1)}	{2(b)(1)}	-	5%				
2	{2(a)(2)}	{2(b)(2)}	{2(a)(1)}	{2(b)(1)}				

3	{2(a)(3)}		{2(a)(2)}	{2(b)(2)}				
4	{2(a)(4)}		1.05 x {2(a)(1)}	{2(b)(3)}				
5			{2(a)(4)}	{2(b)(4)}				
6			{2(a)-(5)}	{2(b)(5)}				
7	{2(a)(7)}		1.05 x {2(a)(4)}	{2(b)(6)}				
8			{2(a)(7)}	{2(b)(7)}				
9			{2(a)(8)}	{2(b)(8)}				
10	{2(a)(10)}		1.05 x {2(a)(7)}	{2(b)(9)}				
11			{2(a)(10)}	{2(b)(10)}				
12			{2(a)(11)}	{2(b)(11)}				
13	{2(a)(13)}		1.05 x {2(a)(10)}	{2(b)(12)}				
14			{2(a)(13)}	{2(b)(13)}				
15			{2(a)(14)}	{2(b)(14)}				
16	{2(a)(16)}		1.05 x {2(a)(13)}	{2(b)(15)}				
17			{2(a)(16)}	{2(b)(16)}				
18			{2(a)(17)}	{2(b)(17)}				
19	{2(a)(19)}		1.05 x {2(a)(16)}	{2(b)(18)}				
20			{2(a)-19}	{2(b)(19)}				
21			{2(a)(20)}	{2(b)(20)}				
22	{2(a)(22)}		1.05 x {2(a)(19)}	{2(b)(21)}				

**CONVENTION CENTRE & 5 STAR CATEGORY HOTEL /RESORT WITH WATER FRONT ENTERTAINMENT, AT
VISAKHAPATNAM ON PPP BASIS**

Section -IV: Draft Concession Agreement

23			{2(a)(22)}	{2(b)(22)}				
24			{2(a)(23)}	{2(b)(23)}				
25	{2(a)(25)}		1.05 x {2(a)(22)}	{2(b)(24)}				
26			{2(a)(25)}	{2(b)(25)}				
27			{2(a)(26)}	{2(b)(26)}				
28	{2(a)(28)}		1.05 x {2(a)(25)}	{2(b)(27)}				
29			{2(a)-28}	{2(b)(28)}				
30			{2(a)-29}	{2(b)(29)}				
31	{2(a)(31)}		1.05 x {2(a)(28)}	{2(b)(30)}				
32			{2(a)(31)}	{2(b)(31)}				
33			{2(a)(32)}	{2(b)(32)}				

Appendix -17

PROHIBITED ACTIVITIES / DEVELOPMENTS

The following activities shall be prohibited from development / operations on the Project Site / Project / Project Facilities:

- (i) Any proposal not permissible as per CRZ Guidelines / Notification
- (ii) Any Proposal not permissible as per Applicable Development Control Regulations / Permissible Land Use
- (iii) Any other facility not listed in the A.P. Tourism Policy 2020-25
- (iv) Any other facility / development not permitted as per the Permissible Land Use of the Project Site