DRAFT CONTRACT FOR OPERATION, MAINTENANCE AND MANAGEMENT – VOL-II

OF THE STATE GUEST HOUSE — "HIMACHAL NIKETAN"

Plot Nos. 1 and 2, Sector-19, Pocket-1, Dwarka, New Delhi

BETWEEN

THE GOVERNOR OF THE STATE OF HIMACHAL PRADESH

acting through the Secretary (General Administration),

Department of General Administration, Government of Himachal Pradesh

AND

[●] {Name of the Operator / Special Purpose Vehicle}

Dated: [●] {Day} day of [●] {Month}, 20[●]

DEPARTMENT OF GENERAL ADMINISTRATION

GOVERNMENT OF HIMACHAL PRADESH

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*This Contract for Operation, Maintenance and Management (the "**Contract**" or the "**OMM Contract**") is made and executed at Shimla, Himachal Pradesh, on this [●] {Day} day of [●] {Month}, 20[●] {Year}:*

BY AND BETWEEN

THE GOVERNOR OF THE STATE OF HIMACHAL PRADESH, acting through the Secretary to the Government of Himachal Pradesh, Department of General Administration, having his office at Armsdale Building, Himachal Pradesh Secretariat, Shimla — 171 002, Himachal Pradesh (hereinafter referred to as the **"Authority"**, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, permitted assigns and substitutes) of the **FIRST PART**;

AND

[●] {Name of the Operator}, a company incorporated under the provisions of the Companies Act, 2013 / a limited liability partnership incorporated under the provisions of the Limited Liability Partnership Act, 2008, having Corporate Identity Number / LLP Identification Number [●] and its registered office at [●] {Address} acting through its [ ] duly authorised vide Board Resolution/ Partners Resolution dated dd/mm/yy (hereinafter referred to as the **"Operator"**, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the **SECOND PART**.

*"The Authority" and "the Operator" are hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".*

WHEREAS:

A. The Government of Himachal Pradesh (**"GoHP"**) holds Plot No. 1 admeasuring 3,197.58 square metres and Plot No. 2 admeasuring 3,197.58 square metres, situated at Sector-19, Pocket-1, Dwarka, New Delhi (collectively, the **"Plots"**), aggregating approximately 1.6 (one point six) acres, on perpetual leasehold basis from the Delhi Development Authority under two Perpetual Lease Deeds dated 9th January 2024 and 16th December 2021 respectively (the **"Lease Deeds"**).

B. The GoHP, through the Department of General Administration, has developed and constructed on the Plots a State Guest House known as **"Himachal Niketan"**, comprising two basement levels, six upper floors and a terrace, with a total built-up area of approximately 2.1 (two point one) lakh square feet, together with 107 (one hundred and seven) guest rooms, dormitories, a restaurant, a banquet hall, multi-purpose halls, office areas, parking spaces and other supporting facilities and amenities (the **"Property"**).

C. With an objective to ensure operation, maintenance and management services in respect of the State Guest House - Himachal Niketan in a financially viable manner whereby the revenue stream generated by the Operator cross-subsidizes the provision of such services to the Government of Himachal Pradesh, while ensuring usage of the property for the purpose of the State Guest House Himachal Niketan, the GoHP is desirous of engaging an operator through a public tendering process.

D. The Himachal Pradesh Infrastructure Development Board (**"HPIDB"**), acting for and on behalf of the Authority as the procuring agency, issued a Request for Proposal dated [●] (the **"RFP"**) inviting bids through a single-stage, two-part electronic competitive bidding process for *"**Selection of an Operator for Operation, Maintenance and Management of Himachal***

Niketan at Dwarka, New Delhi" (the "**OMM Services Project**" or simply the "**Project**" for the sake of brevity) prescribing inter alia the minimum qualification criteria for the selection of successful Bidder and the terms and conditions for the implementation of the Project.

E. In response to the RFP, [●] {Name of the Selected Bidder} submitted its Bid and was, upon evaluation in accordance with the RFP, declared the Selected Bidder, and HPIDB, for and on behalf of the Authority, issued a Letter of Award bearing reference no. [●] dated [●] (the "**LOA**") to the Selected Bidder, which the Selected Bidder duly acknowledged and accepted on [●].

F. In accordance with the terms of the RFP and the LOA, the Selected Bidder has caused the Operator to be incorporated / registered as a special purpose vehicle for the sole purpose of undertaking the Project and executing and performing this Contract, and has furnished to the Authority the Performance Security in the form and manner required under this Contract.

G. The Operator has, as a pre-condition to the signing of this Contract, paid to the Authority the first instalment of the Upfront OMM Contract Amount, being INR 5,00,00,000/- (Indian Rupees Five Crore only), through [*mention method by which payment made*] on [date], which is acknowledged by the Authority.

H. The Selected Bidder has provided Performance Security by way of an unconditional and irrevocable on-demand bank guarantee no. …….. dated ……. from ……. Bank for an amount of Rs. ……../- (Rupees …… only) in favour of the Secretary, Department of General Administration, Government of Himachal Pradesh as security to ensure due and faithful performance of all obligations and covenants during the OMM Period by the Operator under this Contract.

I. The Parties are now desirous of recording the terms and conditions upon which the Operator shall provide the OMM Services in respect of the Property during the OMM Period, and of executing this Contract.

NOW, THEREFORE, **in consideration of the foregoing and the mutual covenants, terms and conditions hereinafter set forth, 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

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

"Accounting Year" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year, or such other period as may be notified as the financial year by the GoI from time to time;

"Additional Booking Right" shall have the meaning set forth in Clause 15.4;

"Additional Booked Rooms" shall have the meaning set forth in Clause 15.4;

"Affected Party" shall have the meaning set forth in Clause 18.1;

"Annual Contract Fee" shall have the meaning set forth in Sub-Clause 14.1.1(b);

"Applicable Laws" means all laws, brought into force and effect by GoI or any State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Contract and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Contract;

"Applicable Permits" means all permits, licences, approvals, authorisations, registrations, consents, exemptions, no-objection certificates, sanctions, certifications and clearances required under Applicable Laws in connection with the furnishing, operation, management, maintenance and use of the Property, including fire safety approvals, food safety licences, health and trade licences, eating house licences, lift approvals, electrical and water connection approvals, environmental and pollution control consents, minimum 4-Star hotel category registration from the Ministry of Tourism, Government of India, police clearances, labour law registrations, liquor and excise licences (where permitted), and any modification, renewal, extension or replacement thereof from time to time;

"Authority" means the person referred to as the Authority in the foregoing Recitals;

"Authority Designated Occupants" means, collectively, the officers, officials, employees, guests, delegates and other persons of, or authorised or nominated by, the Authority and/or the GoHP who are, from time to time, permitted by the Authority to reserve, book, occupy or use the Authority Reserved Accommodation, and includes (a) the students permitted by the Authority to use the student dormitories; (b) the drivers of such officers, officials, employees, guests, delegates and other persons, permitted to use the drivers' dormitory; and (c) to the extent provided in Clause 15.4, persons occupying Additional Booked Rooms;

"Authority Reserved Accommodation" means the guest rooms, suites, student dormitories, drivers' dormitory, PSO rooms, office areas, parking spaces and other accommodation and facilities identified as such in **Schedule-B**, which are reserved exclusively for the use of the Authority, the GoHP and such persons as may be authorised by the Authority from time to time;

"Bid" means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the RFP in accordance with the provisions thereof;

"Bid Documents" or **"Bidding Documents"** means the RFP, all addenda, corrigenda and clarifications issued thereunder, the LOA, and this Contract including its Schedules;

"Bid Due Date" means the date specified in the RFP for submission of the Bid, as extended from time to time;

"Brand" means the trademark registered in: (a) India in accordance with the provisions of the Trade Marks Act, 1999; or (b) any jurisdiction other than India in accordance with the applicable law in such jurisdiction, in each case, under which the Operator is operating and managing its other hotel(s) or resort(s);

"Brand Standards" means the operating, quality and service standards, specifications and procedures applied by the Operator under its Brand for the operation, maintenance, management and furnishing of the Property as a State Guest House, as updated from time to time; provided that such standards shall at all times conform to, and shall not fall below, the 4-Star category hotel guidelines issued by the Ministry of Tourism, GoI and Good Industry Practice;

"Business Day" means a day on which banks are generally open for business in Shimla, Himachal Pradesh, India;

"Change in Ownership" shall have the meaning set forth in Sub-Clause 5.7.1;

"Contract" or **"OMM Contract"** means this Contract, the Recitals and Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Contract;

"Contract Date" means the date of execution of this Contract;

"Contract Period" means the period commencing on and from the Contract Date and ending on the Divestment Date;

"Cure Period" means the period specified in this Contract for curing any breach or default of any provision of this Contract by the Party responsible for such breach or default, and shall: (a) commence from the date on which a notice is delivered by one Party to the other Party calling upon the latter to cure the breach or default specified in such notice; and (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Contract or under law. Provided that, if the cure of any breach by the Operator requires any reasonable action by the Operator which must be approved by the Authority hereunder, the applicable Cure Period shall stand extended by the period taken by the Authority to accord such approval;

"Damages" shall have the meaning set forth in Sub-Clause 1.2.1(r);

"Dispute" shall have the meaning set forth in Sub-Clause 23.1.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 23;

"Divestment" means the: (i) relinquishment by the Operator of its right and interest in the Property; (ii) divestment of the interest and right (if any) of the Operator in and over the Project Assets; (iii) transfer to the Authority (where mandated in this Contract) of the Operator Created Assets, and (iv) leaving the Property after compliance with the Divestment Requirements set forth and in accordance with Article 20;

"Divestment Date" means the date on which the Operator completely exits the Property, having completed the Divestment Requirements in accordance with Article 20 and the Authority resumes unimpeded and exclusive operational control of the Property and the Project Assets;

"Divestment Requirements" shall have the meaning set forth in Clause 20.1;

"Effective Date" means the date on which the Operator is granted the Right of Way, access and right to use the Property on an *"as-is-where-is"* basis, free of Encumbrances, for the purpose of undertaking its obligations in terms of this Contract, pursuant to and in accordance with Clause 3.2;

"Emergency" means a condition or situation that is likely to endanger the security or safety of persons or property at or about the Property, or structural safety which materially impairs the continued availability, safety or operation of the Property or any part thereof;

"Encumbrances" means, in relation to the Property and the Project Assets, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Property or the Project Assets, wherever applicable herein, but excluding any existing utilities;

"Equity Shareholding" means, in relation to the Operator, or to a Member's interest in the Operator: (a) where the Operator is a company, the paid-up equity share capital of the Operator carrying voting rights held by such Member; and (b) where the Operator is a limited liability partnership under the Limited Liability Partnership Act, 2008, the capital contribution of such Member in the Operator, together with its corresponding entitlement to a share in the profits of, and its voting and management rights in, the Operator under its LLP agreement; and (i) any reference to a specified percentage of Equity Shareholding shall be construed as that percentage of each of the components applicable under (a) or (b), as the case may be; and (ii) the expressions "equity share", "equity stake", "shareholding", "share" and cognate expressions, wherever used in relation to the Operator or a Member, shall be construed accordingly;

"Escrow Account" means the account which the Operator shall open and maintain with a Nationalised Bank or a Scheduled Commercial Bank in India acceptable to the Authority, in which all inflows and outflows of cash on account of capital and revenue receipts and expenditure in relation to the Property and the Project shall be credited and debited, as the case may be, in accordance with the provisions of this Contract and the Escrow Agreement, and includes the sub-accounts of such Escrow Account;

"Escrow Agreement" means the escrow agreement to be entered into among the Operator, the Authority and the Escrow Bank, substantially in the form set out at **Schedule-F**;

"Escrow Bank" means the bank with which the Escrow Account is established and maintained in accordance with the Escrow Agreement;

"Escrow Default" shall have the meaning ascribed to it in the Escrow Agreement;

"F&B Services" means the preparation, production, sale, supply, delivery and service of food, beverages and related hospitality offerings at or from the Property, whether through restaurants, dining areas, coffee shops, cafés, lounges, banquet facilities, room service, catering services, kiosks, vending facilities or any other food and beverage outlet, facility or service operated by the Operator or its permitted contractors from time to time, and shall include all ancillary services customarily associated therewith. The acronym **"F&B"** refers to Food and Beverage;

"FF&E" or **"Furniture, Fixtures and Equipment"** means all furniture, furnishings, fixtures, fittings, equipment, appliances and other movable assets installed, placed or used in connection

with the Property, whether existing on the Effective Date or subsequently procured, installed, upgraded or replaced by the Operator during the OMM Period, including beds, mattresses, wardrobes, tables, chairs, sofas, curtains, carpets, televisions, refrigerators, air-conditioning units, kitchen and restaurant equipment, laundry equipment, office equipment, information technology equipment, security equipment, signage, decorative items and other hospitality-related assets ordinarily forming part of a hotel, guest house or hospitality establishment;

"Financial Year" means the Accounting Year;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning set forth in Clause 18.1;

"Furnishing Period" shall have the meaning set forth in Sub-Clause 11.1.1;

"Furnishing Works" means and includes any up-gradation, addition, alteration (except structural change or façade modification), furnishing, equipping, refurbishment, replacement, white-washing, painting, provisioning of furniture, linen, curtains, upholstery, consoles, LED televisions, equipment and appliances, utensils for kitchen and back of house (BOH), other furnishing items, and installation of electrical and mechanical appliances, fittings and fixtures, which the Operator may undertake during the Furnishing Period in accordance with the terms of this Contract and Good Industry Practice, for operationalising the Property in all respects;

"GoHP" means the Government of Himachal Pradesh, its respective departments and any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Himachal Pradesh, and its administrators, successors and assigns;

"GoI" means the Government of India;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Contract, compliant with the 4-Star category hotel guidelines issued by the Ministry of Tourism, GoI, and which would be expected to result in the performance of its obligations by the Operator in accordance with this Contract, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

"Government Instrumentality" means any department, division or sub-division of the GoI or the State Government, and includes any commission, board, authority, agency, municipal or other local authority or statutory body, including a Panchayat, under the control of the GoI or the State Government, as the case may be, and having jurisdiction over all or any part of the Property or the performance of all or any of the services or obligations of the Operator under or pursuant to this Contract;

"Handover Assets" means all assets, equipment, plant, machinery, fixtures, fittings, furniture, appliances, installations and facilities (other than the immovable Property) existing at the Property on the Effective Date and handed over to the Operator, as listed and recorded in the Joint Inventory and Condition Report at Schedule-G, together with all renewals, replacements, substitutions and upgrades of any of them made during the OMM Period; the Handover Assets are owned by the Authority at all times and shall revert to the Authority on expiry or earlier Termination;

"GST" means the goods and services tax levied under the Central Goods and Services Tax Act, 2017, the relevant State or Union Territory Goods and Services Tax Act, and the Integrated

Goods and Services Tax Act, 2017, and the rules made thereunder, as amended from time to time;

"HPIDB" means the Himachal Pradesh Infrastructure Development Board, which acted as the procuring agency on behalf of the Authority in relation to the Bidding Process;

"Indirect Political Event" shall have the meaning set forth in Clause 18.3;

"Insurance Cover" shall have the meaning set forth in Clause 16.1;

"Joint Inventory and Condition Report" means the report to be jointly prepared, signed and recorded by the authorised representatives of the Authority and the Operator prior to the Effective Date in accordance with Sub-Clause 3.2.3, setting out an inventory of all assets, facilities, equipment, installations, plant, machinery and property forming part of the Property together with the condition thereof as at that date, which report shall be annexed to this Contract as **Schedule-G**;

"Lease Deeds" means the Perpetual Lease Deeds dated 9th January 2024 and 16th December 2021 executed between the Delhi Development Authority as lessor and the GoHP as lessee in respect of the Plots;

"LOA" means the Letter of Award referred to in Recital E;

"Material Adverse Effect" means the consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Contract ineffective; (b) significantly impair or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Contract; or (c) frustrate a material provision of this Contract or any of the Project Agreements;

"Nodal Officer" means an officer of the Authority, or any other person appointed by the Authority, who shall perform the roles and responsibilities set forth in Clause 13.2;

"Non-Political Event" shall have the meaning set forth in Clause 18.2;

"O&M Period" means the period commencing on the Operations Date and ending on the Divestment Date;

"OMM" or **"Operation, Management and Maintenance"** means the operation, management and maintenance of the Property in accordance with the provisions of this Contract, and includes all matters connected with or incidental to such operation, management and maintenance, the provision of services and facilities, and the collection of Usage Dues in accordance with the provisions of this Contract;

"OMM Period" means the period of 25 (twenty-five) years commencing on the Effective Date and ending on the Divestment Date, whether by efflux of time or otherwise in the case of premature termination, and includes the Furnishing Period and any extension granted under Sub-Clause 4.1.3 or Clause 18.6; provided that, unless so extended, the OMM Period shall in any event expire on the 25th (twenty-fifth) anniversary of the Effective Date, and the Divestment Requirements and the provisions which survive Termination shall continue to bind the Parties thereafter until the Divestment Date;

"OMM Services" means the operation, maintenance, management and furnishing services in respect of the State Guest House - Himachal Niketan to be provided and performed by the Operator under and in accordance with this Contract, including the carrying out of the Furnishing Works and all operation, maintenance, management, upkeep, repair, replacement,

refurbishment, housekeeping, hospitality, food and beverage, security and other services, functions, activities and obligations comprised in the Operator's scope of work under this Contract and the Schedules hereto;

"Operations" means the operation and management of the Property, or any substantial part thereof, for the provision of accommodation, F&B, banquet, conference, event, recreational, retail and other hospitality-related facilities and services to Users in accordance with this Contract, and includes the right to determine, levy, collect, retain and otherwise deal with Usage Dues in the manner contemplated under this Contract;

"Operations Date" means the date declared as such under Sub-Clause 11.4.1, being the date from which the Operator shall commence the continuous operation, maintenance and management of the Property and the provision of the OMM Services to Users;

"Operator" means the person referred to as the Operator in the foregoing Recitals;

"Operator Created Assets" means all movable assets procured, created, installed or provided by the Operator at the Property, at its own cost, after the Effective Date (including movable FF&E and OS&E, such of the Furnishing Works as remain movable and removable, and the Operator's plant, equipment, furnishings, fittings and operating systems), but excluding: (a) the Property; (b) the Handover Assets and any renewal, replacement, substitution or upgrade thereof; (c) any asset which is, or which during the OMM Period becomes, affixed to or embedded in the Property such that it cannot be removed without material damage to the Property (including any partition wall, false ceiling, ducting, counter or similar non-removable fit-out installed by the Operator), all of which shall form part of the Project Assets). The Operator Created Assets are owned by the Operator during the OMM Period, subject to Article 20;

"Operator Event of Default" shall have the meaning set forth in Sub-Clause 19.1.1;

"Operator Operational Accommodation" means all guest rooms, accommodation, facilities, amenities, operational spaces, parking and other areas of the Property available for operation by the Operator under **Schedule-B**, other than the Authority Reserved Accommodation, including (i) all guest rooms and other accommodation not forming part of the Authority Reserved Accommodation; (ii) the restaurant and F&B outlets and services; (iii) the banquet hall and banquet facilities; (iv) the multi-purpose halls; (v) the waiting lounges; (vi) the souvenir shop and other retail outlets; (vii) the car and two-wheeler parking spaces available for operation by the Operator; (viii) advertising, promotional and branding spaces; and (ix) all other facilities, amenities, operational spaces, ancillary services and activities available for operation by the Operator under this Contract; being the inventory, facilities and spaces in respect of which the Operator is entitled to determine the tariff and to levy, collect, retain and appropriate the proceeds in accordance with this Contract;

"OS&E" or **"Operating Supplies and Equipment"** means all operating supplies, utensils, crockery, cutlery, glassware, linen, towels, housekeeping equipment, kitchenware, guest room accessories and other movable items ordinarily used in the day-to-day operation of a hospitality facility, excluding FF&E;

"Parties" means the parties to this Contract collectively, and **"Party"** means any of the parties to this Contract individually;

"Performance Security" shall have the meaning set forth in Clause 10.1;

"Person" means any natural person, firm, corporation, company, partnership, limited liability partnership, joint venture, trust or other entity having legal capacity to sue and be sued in its own name;

"Political Event" shall have the meaning set forth in Clause 18.4;

"Plots" means Plot No. 1 (3,197.58 square metres) and Plot No. 2 (3,197.58 square metres) situated at Sector-19, Pocket-1, Dwarka, New Delhi, owned by the DDA and leased to the GoHP under the Lease Deeds, and on which the State Guest House known as "Himachal Niketan" is developed;

"Project" or **"OMM Services Project"** means the operation, management and maintenance of the State Guest House known as "Himachal Niketan" during the OMM Period, for the provision of the OMM Services, including the carrying out of the Furnishing Works, in accordance with the provisions of this Contract, Applicable Laws, Applicable Permits, Brand Standards and Good Industry Practice;

"Project Agreements" means all material agreements entered into between the Operator and third Persons, such as vendors, service providers, contractors and consultants, for the provision of any goods or services to the Operator in relation to the Property;

"Project Assets" means, collectively, the Handover Assets and all additions, alterations, modifications, improvements, refurbishments, extensions, replacements and affixed installations (including any non-removable fit-out installed by the Operator) which form part of, or are affixed to, the Property from time to time and are owned by, or vest in, the Authority, but excluding (i) the Property itself and (ii) the Operator Created Assets, and shall include:

(a) all buildings, structures, fixtures, fittings and immovable assets;

(b) all FF&E, machinery, plant, electrical, mechanical, plumbing, HVAC, fire and life safety systems, utilities, information technology systems, telecommunications infrastructure and other movable assets forming part of the Property;

(c) all roads, pathways, circulation areas, parking areas, drainage systems, landscaping, signage, utility networks and associated infrastructure within the Plots;

(d) all additions, alterations, modifications, improvements, refurbishments and extensions undertaken in accordance with this Contract;

(e) all rights of use, licences, easements and other rights granted to the Operator in relation to the Plots and the Property;

(f) all other assets and facilities necessary for, or incidental to, the implementation, operation, management and maintenance of the Project; and

(g) Applicable Permits and authorisations relating to, or in respect of, the Project.

Provided that the Project Assets shall not include the Operator's trade receivables, security deposits, cash balances or insurance proceeds, which shall remain the property of the Operator subject to Article 6 and Clause 16.7.

"Property" means the immovable estate, namely the State Guest House known as "Himachal Niketan" developed by the GoHP on the Plots (held on perpetual leasehold basis under the Lease Deeds), including all buildings, structures, civil works and all installations and systems permanently affixed to or forming part of the building (including electrical, mechanical,

plumbing, HVAC, lift, fire and life-safety and utility systems), as more particularly described in Schedule-A. For the avoidance of doubt, the expression "Property" identifies the physical estate that is the subject of the OMM Services and does not, and shall not be construed to, confer any right, title or interest in the Property upon the Operator;

"Revenue Collections" means, in relation to the Project during any Financial Year, the total amount of revenue and receipts of every kind (from both cash and credit transactions) derived directly or indirectly by the Operator from or in connection with the OMM Services rendered, as certified by the Statutory Auditors of the Operator, including receipts from room occupancy charges, charges from events, capital receipts, advertising, internet, telephone, telefax and telex charges, laundry, sale of food, beverages and liquor, recreational amenities (health club, spa, sauna, sports and fitness facilities and all other miscellaneous receipts), outdoor catering, conference and banquet charges, receipts from vending machines and parking, and includes charges of every description and kind and the recovery in respect of any other service or facility provided by the Operator to the Users or guests of the Property;

"RFP" means the Request for Proposal referred to in Recital D, together with all addenda, corrigenda and clarifications issued thereunder;

"Right of Way" means the right to enter upon the Property for the purposes of, and in accordance with, the provisions of this Contract;

"Selected Bidder" means the bidder selected by the Authority for award of the Project following completion of the Bidding Process (as defined under the RFP);

"State Government" means the Government of Himachal Pradesh;

"Statutory Auditors" means a reputable firm of chartered accountants acting as the statutory auditors of the Operator and appointed under the provisions of the Companies Act, 2013 or, where the Operator is a limited liability partnership, under the Limited Liability Partnership Act, 2008 and the rules made thereunder, including any statutory modification or re-enactment thereof for the time being in force;

"Structural Defect" means any major or latent defect, deficiency, deterioration or failure in the structural integrity or stability of the base-build structural works constructed by or on behalf of the GoHP and forming part of the Property as at the Effective Date, which arises from any inherent defect, deficiency or failure in the design, materials or construction of such structural works, was not reasonably apparent upon inspection at the Effective Date, and is not caused by or attributable to any act, omission, default or breach of the Operator;

"Taxation" or **"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 or other reference, and statutory, governmental, State, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise), in respect of any Person, and all penalties, charges, costs and interest relating thereto;

"Termination" means the expiry or earlier termination of this Contract and of the OMM rights granted hereunder;

"Termination Date" means the date specified in a Termination Notice as the date on which Termination shall take effect;

"Termination Notice" means the communication issued in writing in accordance with this Contract by one Party to the other Party terminating this Contract;

"Termination Payment" means the amount, if any, payable by the Authority to the Operator upon Termination of this Contract due to Political Event, as expressly provided for under this Contract;

"Upfront OMM Contract Amount" shall have the meaning set forth in Sub-Clause 14.1.1(a);

"Usage Dues" means any and all amounts payable by guests, visitors, occupants (including Authority Designated Occupants) or Users of the Property to the Operator in connection with their stay at, or utilisation of, the Property and its facilities, amenities and services, and shall include, without limitation:

(a) fees, charges, tariffs, levies and assessments imposed for the use of rooms, facilities, amenities, utilities or services;

(b) Taxes, cesses, duties and statutory impositions (whether existing or future) recoverable from guests under Applicable Laws;

(c) service charges, convenience fees and ancillary costs associated with hospitality, recreational or event services; and

(d) any other amounts recoverable from guests or visitors in relation to their occupation, enjoyment or use of the Property;

"Users" means any person who uses, occupies, accesses, avails, visits, books, utilises or otherwise derives the benefit of any accommodation, facility, amenity, service, operational space or other part of the Property, whether directly or indirectly, and shall include guests, occupants, visitors, invitees, customers, event participants, conference attendees, patrons of restaurants, cafés and F&B outlets, users of banquet, recreational or ancillary facilities, Government officials or other persons authorised to occupy the Authority Reserved Accommodation, and any vendor, service provider, shop operator, kiosk operator or other third party operating from or using any part of the Property pursuant to rights granted by the Operator in accordance with this Contract;

"Vesting Certificate" shall have the meaning set forth in Clause 20.5; and

"Works" means the Furnishing Works and all activities, works, services and obligations relating to the operation, management, maintenance, repair, replacement, rectification, restoration, refurbishment, modification and upkeep of the Property and the Project Assets required to be undertaken by the Operator pursuant to this Contract, including all permanent, temporary, ancillary, emergency and remedial works necessary for performance of the Project and the Operator's obligations hereunder.

1.2 Interpretation

1.2.1 In this Contract, unless the context otherwise requires:

(a) references to Recitals, Articles, Clauses, Sub-Clauses and Schedules are, unless otherwise stated, references to Recitals, Articles, Clauses, Sub-Clauses of, and Schedules to, this Contract, and the Recitals and Schedules form an integral part hereof;

(b) words importing the singular include the plural and vice versa, and words importing any gender include every gender;

(c) the headings, sub-headings, marginal notes and the table of contents are inserted for convenience of reference only and shall not affect the construction or interpretation of this Contract;

(d) references to a "company" or "corporation" shall be construed so as to include any body corporate, partnership, limited liability partnership, association or other legal entity, whether incorporated or established in India or elsewhere;

(e) any reference to a period commencing "from" a specified day or date and continuing "till" or "until" a specified day or date shall include both such days or dates;

(f) the words "hereof", "herein", "hereto" and "hereunder" and words of similar import refer to this Contract as a whole and not to any particular provision hereof;

(g) "lakh" means one hundred thousand and "crore" means ten million, and both expressions shall be construed accordingly;

(h) the words "include", "includes" and "including" shall be construed as being followed by the words "without limitation";

(i) references to a "day" mean a calendar day, and where any period is expressed in days, the day on which the period commences shall be excluded and the last day of the period shall be included;

(j) references to a "month" mean a calendar month and references to a "year" mean a period of 365 (three hundred and sixty-five) days, save in the case of a leap year, in which case it shall mean 366 (three hundred and sixty-six) days;

(k) references to time shall be to Indian Standard Time;

(l) references to "Rupees", "Rs.", "INR" or "₹" are to the lawful currency of the Republic of India, and all payments hereunder shall be made in Indian Rupees;

(m) any reference to any enactment, ordinance, rule, regulation or notification shall be construed as a reference to such enactment, ordinance, rule, regulation or notification as amended, extended, consolidated, re-enacted or replaced from time to time;

(n) any reference to a Party includes such Party's successors and permitted assigns and substitutes;

(o) any reference to any agreement, deed, instrument, licence, permit or document shall be construed as a reference to such agreement, deed, instrument, licence, permit or document as amended, varied, supplemented, novated or replaced from time to time in accordance with its terms;

(p) this Contract, having been negotiated between the Parties and prepared on the basis of the Bidding Documents, shall not be construed against or in favour of any Party by reason of such Party having drafted or caused to be drafted any provision hereof, and the rule of ‘contra proferentem’ shall not apply to the interpretation of this Contract;

(q) all obligations of the Operator under this Contract shall be performed at the sole cost, risk and expense of the Operator, and no cost, charge, expense or liability arising out of or in connection with the performance of such obligations shall be borne by the Authority, save as expressly provided herein; and

(r) any reference to "**Damages**" or to compensation, damages or amounts payable by one Party to the other for breach or non-performance of any obligation under this Contract shall be construed as a reference to a genuine pre-estimate of the loss likely to be suffered, agreed between the Parties as reasonable compensation and not as a penalty, and the Party entitled thereto shall not be required to prove actual loss or damage in respect thereof.

1.2.2 The words and expressions beginning with, or in, capital letters and defined in this Contract shall have the meanings ascribed thereto herein; and the words and expressions used in this Contract and not defined herein but defined in the RFP shall, unless repugnant to the context, have the meanings ascribed thereto in the RFP.

1.2.3 References to the Authority acting, approving, consenting, determining, satisfying itself, requiring or otherwise exercising any right or discretion under this Contract shall mean the Authority acting through the Secretary (General Administration), GoHP, or through the Nodal Officer or such other officer as may be duly authorised in that behalf.

1.3 Measurements and Arithmetic Conventions

1.3.1 All measurements and calculations under this Contract shall be in the metric system and in accordance with the International System of Units (SI), save that areas may additionally be expressed in square feet and acres where the context so requires.

1.3.2 All calculations shall be carried out to two decimal places, and the third decimal place shall be rounded off upwards where the third decimal place is 5 (five) or above, and downwards where it is 4 (four) or below.

1.3.3 Where any monetary amount is expressed both in figures and in words and there is a discrepancy between the two, the amount expressed in words shall prevail.

1.4 Priority of Agreements and Errors/Discrepancies

1.4.1 This Contract, together with the Schedules hereto, constitutes a complete code in respect of the matters dealt with herein. In the event of any conflict, ambiguity, inconsistency or repugnancy between or among the Bidding Documents, the following order of precedence shall apply:

(a) this Contract, being the Articles and Clauses hereof;

(b) the Schedules to this Contract;

(c) the LOA;

(d) the RFP, together with all addenda, corrigenda and clarifications issued thereunder; and

(e) the Bid.

1.4.2 Within this Contract, in the event of any conflict or inconsistency:

(a) the Articles and Clauses shall prevail over the Schedules;

(b) a provision dealing specifically with a matter shall prevail over a provision dealing with such matter generally; and

(c) any provision of the Escrow Agreement in conflict with this Contract shall stand subordinated to this Contract, and the provisions of this Contract shall prevail.

1.4.3 If the Operator discovers any error, omission, ambiguity, discrepancy or inconsistency in or between any of the Bidding Documents, it shall promptly, and in any event within 15 (fifteen) days of such discovery, notify the Authority in writing. The Authority shall, within 30 (thirty) days of receipt of such notice, determine the manner in which such error, omission, ambiguity, discrepancy or inconsistency shall be resolved, and such determination shall, subject to the Dispute Resolution Procedure, be binding on the Operator.

1.4.4 No error, omission, ambiguity, discrepancy or inconsistency in the Bidding Documents shall entitle the Operator to any relief from, or extension of time for, the performance of its obligations hereunder, or to any claim for additional cost, compensation or Damages against the Authority.

2. SCOPE OF OMM SERVICES

2.1 Scope of OMM Services

2.1.1 The Operator shall, during the OMM Period, at its own cost, risk and expense and as an operating expense, provide, perform and discharge the OMM Services in respect of the Property in accordance with this Contract, the Schedules hereto, Applicable Laws, Applicable Permits, the Brand Standards and Good Industry Practice.

2.1.2 The scope of the OMM Services set out in this Article 2 and in **Schedule-C** is inclusive and not exhaustive, and shall be construed as including all works, services, functions, activities and obligations reasonably necessary or incidental to the operation, maintenance and management of the Property as a State Guest House of a standard not below the 4-Star category hotel guidelines issued by the Ministry of Tourism, GoI. The scope of the OMM Services shall, without limitation, include the following:

(a) **Furnishing Works, fit-out and equipment:** to procure, install and commission, as necessary, all FF&E, OS&E, kitchen and laundry equipment, guest-room amenities, MEP systems, back-of-house equipment and all other assets required for the efficient, safe and professional operation and management of the Property, and to complete the Furnishing Works within the Furnishing Period in accordance with Clause 11.1;

(b) **Hospitality technology:** to procure, install, operate, maintain, upgrade and support a Property Management System (PMS), a Point of Sale (POS) system, a Revenue Management System (RMS), a central reservation and booking system, guest Wi-Fi and related information technology infrastructure, and to ensure interoperability with the online reservation portal of the Authority to the extent required under Clause 15.1;

(c) **Quality of materials:** to use new and premium quality materials for furniture, furnishings, fittings and fixtures conforming to the Brand Standards and to the standards applicable to the 4-Star category hospitality guidelines issued by the Ministry of Tourism, GoI. No second-hand, refurbished, reconditioned or salvaged material shall be used in the Furnishing Works or in the Property without the prior written approval of the Authority;

(d) **Statutory compliance:** to obtain, maintain, comply with and renew, at its own cost, all Applicable Permits, insurance policies and annual maintenance contracts required for the operation, maintenance and management of the Property in accordance with Applicable Laws and the requirements of competent authorities, and to make available the originals thereof for inspection by the Authority;

(e) **Reservation & Occupancy management:** to implement appropriate sales, reservation and marketing strategies, to maximise occupancy and utilisation, and to manage the Property in a financially viable manner while cross-subsidising the provision of the OMM Services to the GoHP in the manner contemplated under this Contract;

(f) **Service delivery:** to provide, operate, manage and maintain all accommodation, hospitality, housekeeping, F&B, guest relations, concierge, front office, laundry, security, facility management and other ancillary services, facilities and amenities necessary to ensure the safe, efficient and uninterrupted functioning of the Property;

(g) **Repair and maintenance:** to undertake all routine, preventive, periodic and corrective repair and maintenance activities, including civil, electrical, mechanical, plumbing,

HVAC, fire safety, lift, water supply, sewerage, drainage, horticulture, landscaping and allied works, so that the Property consistently meets the prescribed operational, safety, aesthetic and quality standards, and to maintain a documented planned preventive maintenance schedule for the Property and the Project Assets;

(h) **Emergency response and security:** to establish and maintain appropriate systems for emergency response, evacuation, fire safety, first aid and prompt medical assistance in cases of accident or Emergency; and, during VVIP movements, to support the Authority, the GoHP, the local police and other competent Government and security agencies, to comply with all applicable security protocols and directions, and to ensure adherence to the security measures prescribed by them, including any takeover of the security arrangements at the Property, if so required;

(i) **Authority Reserved Accommodation:** to operate, maintain, house-keep, upkeep and manage the Authority Reserved Accommodation in accordance with Article 15, and to ensure that the standard and quality of furnishing, services, F&B and maintenance of the Authority Reserved Accommodation is at all times equal to, and at par with, that of the Operator Operational Accommodation;

(j) **Restriction on works:** not to undertake any structural alteration, addition, demolition or modification whatsoever, and not to undertake any works that affect the structural integrity of the Property, its external façade or the construction works undertaken by the GoHP without the prior approval of the Authority/ GoHP. Interior furnishing and fit-out shall be permitted only to the extent that they do not so affect the Property. In the event of any damage caused in breach of this sub-clause, the Operator shall be responsible to rectify and repair the same at its own risk, cost and expense to the satisfaction of the Authority; and

(k) Upon expiry or earlier Termination of this Contract, to leave the Property in good operating condition, normal wear and tear excepted, and otherwise in accordance with Article 20.

2.1.3 The Operator acknowledges that the primary purpose of the Property is to serve as the State Guest House of the GoHP, and undertakes that it shall at all times operate and manage the Property in a manner consistent with the dignity, decorum, protocol and security requirements attaching to that purpose.

2.1.4 The Operator acknowledges and confirms that at all times, the underlying objective of the Contract shall remain providing operation, maintenance and management services in respect of the State Guest House (Himachal Pradesh) known as "Himachal Niketan" in a financially viable manner, while subsidizing such services for GoHP through subsidizing revenue stream to be created by the Operator, while ensuring usage of the property for the purpose of the State Guest House (Himachal Pradesh). However, the Authority/ GoHP recognizes that the Operator is not a charitable organization and shall be providing the operation, maintenance and management services in respect of the State Guest House (Himachal Pradesh) against legitimate expectation of reasonable financial returns, which are essential for viability of operations.

2.1.5 The Operator shall not use, or permit the use of, the Property or any part thereof for any purpose other than the Project, nor for any purpose which is unlawful, immoral, hazardous, or which may prejudice the reputation of the Authority or the GoHP.

3. APPOINTMENT OF OPERATOR, GRANT OF OMM RIGHTS AND ACCESS TO PROPERTY

3.1 Appointment and Grant of OMM Rights

3.1.1 Subject to and in accordance with the provisions of this Contract, Applicable Laws and Applicable Permits, the Authority hereby appoints the Operator, and grants to the Operator the right and authority, at the Operator's sole risk, cost and expense, during the OMM Period, to:

(a) undertake and complete the Furnishing Works and thereafter operate, manage and maintain the Property and provide the OMM Services;

(b) access, enter upon and manage the Property and the Project Assets for the sole purpose of providing the OMM Services;

(c) determine, demand, collect, retain and appropriate Usage Dues from Users in respect of the Operator Operational Accommodation, and to collect and retain the room charges realised in respect of the chargeable rooms comprised in the Authority Reserved Accommodation, in each case in accordance with Articles 15 and 17; and

(d) manage, supervise, staff, service and administer the day-to-day operations of the Property in accordance with Good Industry Practice and the Brand Standards,

and the Operator hereby accepts such appointment and grant, and undertakes to perform and discharge the OMM Services and all its obligations under this Contract.

3.1.2 The Parties expressly agree, acknowledge and confirm that this Contract constitutes a pure service and management engagement. The Operator obtains under this Contract only the right to operate, manage and maintain the Property and to provide the OMM Services, and acts solely as a service provider to the Authority.

3.1.3 Nothing contained in this Contract shall be construed or deemed to create, transfer, convey, demise, assign or vest in the Operator any right, title, interest, easement, tenancy, sub-tenancy, lease, sub-lease, licence coupled with interest, or any estate or proprietary interest of any nature whatsoever in or over the Property, the Plots or any part thereof. **The legal possession of, and the ownership and control over, the Property shall at all times remain vested with the Authority and the GoHP**, and the Operator's occupation of the Property shall at all times be for and on behalf of, and as a service provider to, the Authority.

3.1.4 The Operator shall not claim, and shall not be entitled to claim, any right, title or interest in or over the Property or the Plots, nor shall it seek to create, assert or perfect any such right at any time, whether during the OMM Period or thereafter.

3.1.5 The grant of rights under this Article 3 is personal to the Operator and is not assignable, transferable or capable of being sub-contracted in whole, save and except as expressly permitted under Article 21.

3.2 Grant of the Operator's Right to Access the Property

3.2.1 The Authority shall within 15 (fifteen) days from the Contract Date, hand over the Property to the Operator on an *'as-is-where-is'* basis, free of Encumbrances, together with peaceful and unimpeded access thereto, for the purposes of undertaking the Furnishing Works and thereafter providing the OMM Services in accordance with this Contract.

3.2.2 The Operator shall, prior to the Effective Date, have satisfied itself in all respects as to the condition, adequacy, suitability, sufficiency and fitness for purpose of the Property and the assets and facilities existing thereat, and shall be deemed to have inspected and examined the same. The Operator shall have no claim whatsoever against the Authority in respect of the condition or state of the Property or assets and facilities existing thereat as at the Effective Date except for any Structural Defects.

3.2.3 Prior to the Effective Date, the authorised representatives of the Authority and of the Operator shall jointly conduct an inspection of the Property and shall prepare, sign and record a joint inventory of all assets, facilities, equipment, installations, plant, machinery and property including the Handover Assets to be handed over to the Operator for the purposes of the OMM Services, together with the condition thereof as at that date (the "**Joint Inventory and Condition Report**"). The Joint Inventory and Condition Report, once signed by both Parties, shall be annexed to this Contract as **Schedule-G** and shall form an integral part hereof. The date on which such access and handover is actually provided in writing to the Operator the Parties having completed and jointly signed the Joint Inventory and Condition Report shall constitute the "Effective Date" for the purposes of this Contract, and the OMM Period shall commence from the Effective Date. For the avoidance of doubt, legal possession and overriding control of the Property, together with the assets existing thereon and all open areas, shall at all times remain vested in the Authority.

3.2.4 If so requested by the Operator, the Authority shall facilitate the Operator by sharing copies of the as-built drawings (including MEP drawings) and any existing annual maintenance contracts or warranties as may be available with the Authority in respect of the installations, equipment, plant and machinery installed by the GoHP. The Authority makes no representation or warranty as to the completeness, accuracy or adequacy of such drawings, contracts or warranties, and the provisions of Article 9 shall apply thereto.

3.2.5 The right of access granted hereunder is limited to such access as is necessary for the performance of the OMM Services and shall not extend to any part of the Property which the Authority may, by written notice, reasonably designate as being excluded from the Operator's access on grounds of security or protocol, save to the extent required for the housekeeping, maintenance and upkeep obligations of the Operator.

3.3 Access Rights of the Authority and Others

3.3.1 Notwithstanding the grant of rights under Clause 3.1, the Authority, the GoHP, the Nodal Officer and their respective officers, employees, agents, contractors, consultants and other authorised representatives shall at all times have the right of free, unrestricted and unimpeded access to and upon the Property and every part thereof, without payment of any charge, for the purposes of:

(a) inspecting the Property, the Project Assets and the Authority Reserved Accommodation in accordance with Clause 12.4;

(b) monitoring and verifying compliance by the Operator with its obligations under this Contract;

(c) exercising the step-in and remedial rights of the Authority under Clause 7.3;

(d) attending to matters of protocol, security and VVIP movement; and

(e) discharging any statutory, sovereign or governmental function.

3.3.2 The Operator shall also permit free access to the Property to any Government Instrumentality, statutory authority, police or security agency exercising powers under Applicable Laws.

3.3.3 Access under this Clause 3.3 shall, save in the case of an Emergency, a security requirement, a VVIP movement or the exercise of a statutory power, be exercised upon reasonable prior notice to the Operator and in a manner, which does not unreasonably interfere with the day-to-day operations of the Property.

3.3.4 The Operator shall provide all reasonable assistance, information, records and facilities to persons exercising access rights under this Clause 3.3, and shall not obstruct, hinder or delay such access.

4. THE TERM OF OMM SERVICES

4.1 Term of OMM Services

4.1.1 This Contract shall come into force and effect on the Contract Date and, unless terminated earlier in accordance with the provisions hereof, shall continue in full force and effect until the Divestment Date.

4.1.2 The OMM Period shall be a period of 25 (twenty-five) years commencing on and from the Effective Date, and shall be inclusive of the Furnishing Period. The Operator shall provide the OMM Services throughout the OMM Period in accordance with this Contract.

4.1.3 Prior to the expiry of the OMM Period by efflux of time, the Authority may, at its sole and absolute discretion, consider extending the OMM Period by a further period of 5 (five) years, provided that the performance of the Operator has been good and the Operator is not, and has not been, in breach or default of any of its obligations under this Contract. It is expressly clarified that the grant of such extension is a matter entirely within the discretion of the Authority and does not constitute any entitlement, right or legitimate expectation of the Operator, and no claim of any nature shall lie against the Authority on account of the refusal or non-grant of such extension.

4.1.4 An application by the Operator seeking an extension under Sub-Clause 4.1.3 shall be made no earlier than 12 (twelve) months prior to the scheduled expiry of the OMM Period. The Authority shall communicate its decision not later than 6 (six) months prior to such expiry. Any extension granted shall be on such terms and conditions, including as to the revised Annual Contract Fee, as the Authority may stipulate.

4.1.5 The OMM Period shall stand extended by a period equal in length to the duration of any Force Majeure Event during which the Operator was prevented from executing the Furnishing Works or from operating the Property, in accordance with Clause 18.6.

4.1.6 Notwithstanding the expiry of the OMM Period, this Contract shall continue to bind the Parties in respect of the Divestment Requirements until the Divestment Date, and thereafter in respect of such provisions as expressly or by implication survive Termination.

5. OPERATOR'S COVENANTS AND OBLIGATIONS

5.1 Covenants of the Operator

5.1.1 Subject to and on the terms and conditions of this Contract, The Operator shall, at its own cost, risk and expense:

(a) provide, perform and discharge the OMM Services diligently, efficiently, continuously and without interruption throughout the OMM Period, in conformity with this Contract, Applicable Laws, Applicable Permits, the Brand Standards and Good Industry Practice;

(b) make, or cause to be made, necessary applications to the relevant Government Instrumentality with such particulars and details, as may be required for obtaining all Applicable Permits;

(c) obtain, maintain, comply with and renew all Applicable Permits, and provide certified copies thereof to the Authority within 15 (fifteen) days of issue or renewal;

(d) employ, engage, deploy, train, supervise and pay an adequate number of suitably qualified, experienced, trained, courteous and police-verified personnel for the performance of the OMM Services, and ensure that all such personnel carry identity cards and observe such security, protocol and conduct requirements as may be prescribed by the Authority;

(e) not employ any person in the performance of the OMM Services who has been convicted of any offence involving moral turpitude, or against whom any adverse police verification report subsists;

(f) procure, install, operate, maintain, repair, replace, refurbish and upgrade the FF&E, OS&E, plant, machinery, equipment, systems and installations as required for the Property to be operated at all times to the Brand Standards;

(g) maintain the Property, the Project Assets and the Operator Created Assets in a clean, safe, sanitary, secure, hygienic, well-lit, well-ventilated and good operating condition, free from pests, vermin and infestation, and in accordance with all applicable health, hygiene, food safety and fire safety norms;

(h) keep the Property free from all Encumbrances created by or through the Operator, and promptly discharge and remove any such Encumbrance;

(i) pay, when due, all wages, salaries, statutory dues, Taxes, utility charges, vendor and contractor dues and all other liabilities incurred by it in the performance of the OMM Services, and keep the Authority fully indemnified in respect thereof;

(j) provide such information, records, statements, returns, reports and access as the Authority or the Nodal Officer may reasonably require in connection with the Project;

(k) co-operate with the Authority, the GoHP, the Nodal Officer and all Government Instrumentalities, police and security agencies in the discharge of their respective functions;

(l) make payment of Annual Contract Fee and applicable GST to the Authority in a timely manner as per provisions of this Contract;

(m) may erect electronic hoardings and small advertisement boards, as per the Applicable Laws after obtaining prior approval from Authority, in the Property;

(n) make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;

(o) comply with all lawful directions issued by the Authority or the Nodal Officer in accordance with this Contract.

5.1.2 The Operator shall at all times remain solely responsible for the acts, omissions, defaults, negligence and misconduct of its personnel, contractors, sub-contractors, agents and representatives, as if they were its own.

5.1.3 The Operator shall not, without the prior written approval of the Authority, undertake any activity at or from the Property which is not comprised within, or reasonably incidental to, the OMM Services.

5.1.4 The Operator warrants that it shall carry out its obligations using all due skill, care and diligence expected of an operator in executing a work of this nature and magnitude in a proper workmanlike and careful manner with properly equipped facilities and premium quality non-hazardous materials, in accordance with the provisions of this Contract.

5.1.5 The Operator shall not undertake or permit any gambling, betting or any other unlawful or unauthorized activity at the Property. If the Operator undertakes or permits any unauthorized activity in breach of this Contract, the same shall constitute an Operator Event of Default for which no cure period shall be admissible to the Operator.

5.2 Obligations relating to Project Agreements

5.2.1 The Operator may, at its own cost and risk, engage one or more service providers, consultants or specialist agencies possessing the requisite technical, operational, managerial or professional expertise for the provision of any specific service forming part of the overall OMM Services to be performed by the Operator, including F&B Services, laundry, security, spa and wellness services, recreational activities, parking management, souvenir shop, forex exchange services, travel assistance services, etc. However, it is expressly agreed that the Operator shall, at all times, be responsible and liable for all their acts and omissions. It is clarified that the Operator cannot assign the whole Contract or outsource the entire operation & management of the Property to any third party.

5.2.2 The Operator may enter into Project Agreements with vendors, service providers, contractors and consultants for the provision of goods or services in relation to the Property, provided that:

(a) every Project Agreement shall be consistent with, and subject to, the provisions of this Contract, and shall not confer upon the counterparty any right, title or interest in the Property;

(b) every Project Agreement shall expressly provide that it shall stand automatically terminated, or at the option of the Authority stand assigned to the Authority or its nominee, upon Termination of this Contract, without any liability whatsoever on the Authority;

(c) the term of no Project Agreement shall extend beyond the OMM Period; and

(d) the Operator shall remain solely and primarily liable to the Authority for the performance of the OMM Services notwithstanding the engagement of any third party under a Project Agreement.

5.2.3 The Operator shall if demanded, furnish to the Authority a certified true copy of every Project Agreement (but excluding employment contracts, purchase orders, supply contracts for consumables, utility contracts, OTA arrangements, software subscriptions) within 15 (fifteen) days of its execution, together with such particulars as the Authority may require for its record.

5.2.4 No Project Agreement, and no arrangement of the nature described in Sub-Clause 5.2.1, shall create, or be construed as creating, any right of tenancy, sub-tenancy or occupancy in favour of any third party, and the Operator shall be responsible for securing vacant custody of all such areas prior to the Divestment Date.

5.3 Safety and Security

5.3.1 The Operator shall, at its own cost, provide, operate and maintain a comprehensive safety and security system for the Property, including trained security personnel, access control, baggage and vehicle screening arrangements, closed-circuit television surveillance with a minimum recording retention of 90 (ninety) days, fire detection, fire alarm and fire-fighting systems, public address systems, emergency lighting and emergency evacuation arrangements.

5.3.2 The Operator shall maintain, and periodically test, all fire, life-safety and emergency systems, and shall conduct fire and evacuation drills at intervals of not more than 6 (six) months, and shall furnish records thereof to the Nodal Officer.

5.3.3 The Operator shall establish appropriate systems for emergency response, first aid and prompt medical assistance in cases of accident or Emergency, including a tie-up with a hospital in reasonable proximity to the Property and the availability of a qualified first-aid attendant at all times.

5.3.4 In the event of, or in anticipation of, any VVIP movement, high-security visit, or state protocol event, no prior notice, permission, or justification shall be required by the Authority, GoHP, local police, or specialized security forces to gain immediate access to any part of the Property. The Operator hereby waives any claim to guest privacy or operational disruption in respect of such security interventions.

5.3.5 During any VVIP movement, state visit, or high-security event, the entire security apparatus of the Property shall immediately come under the absolute command, control, and supervision of the GoHP, local police authorities, and/or specialized government security and commando forces (such as the CID, IB, or SPG, as applicable). The directions, protocols, and mandates of such government forces shall completely supersede the Operator's security arrangements. The Operator shall strictly comply with all security protocols, sanitization drives, anti-sabotage checks, and deployment mandates prescribed by the competent authorities.

5.3.6 The Operator shall maintain a register of all Users, visitors and vehicles entering the Property in such form as may be prescribed by Applicable Laws or required by the police authorities, and shall furnish such particulars to the police and to the Nodal Officer as and when required.

5.3.7 The Operator, if directed by the Authority/ GoHP, shall submit complete biometric profiles and Police Clearance Certificates (PCC) of all its employees, agents and service providers to the local police and the Authority for prior security vetting. The GoHP and local police authorities reserve the absolute right to deny access to, or order the immediate removal of, any personnel of the Operator from the Property during a VVIP visit without assigning any reason, and the Operator shall comply with such orders instantly.

5.3.8 The Operator shall promptly report to the Authority and to the police any accident, injury, death, fire, criminal act, breach of security, damage to the Property or other untoward incident occurring at or in relation to the Property, and shall furnish a written report to the Nodal Officer within 24 (twenty-four) hours of the occurrence thereof.

5.4 Compliance with all Applicable Labour Laws

5.4.1 The Operator shall employ and engage all personnel deployed at the Property as its own employees, workmen or contractors, and shall be solely responsible for their recruitment, deployment, supervision, remuneration, welfare, discipline and termination.

5.4.2 The Operator shall comply with, and shall procure that its contractors comply with, all labour, industrial and social security legislation applicable to the Project, including the Contract Labour (Regulation and Abolition) Act, 1970, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, the Payment of Gratuity Act, 1972, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948, the Employees' Compensation Act, 1923, the Maternity Benefit Act, 1961, the Equal Remuneration Act, 1976, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, and all rules, regulations and notifications made thereunder, as well as any labour codes replacing or consolidating the same.

5.4.3 The Operator shall obtain and maintain all registrations and licences required under such legislation, shall maintain all prescribed registers and records, shall file all prescribed returns, and shall make available the same for inspection by the Authority and by the competent statutory authorities.

5.4.4 The Operator shall constitute an Internal Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and shall display the prescribed notices at the Property.

5.4.5 No employer-employee relationship, master-servant relationship, or relationship of any nature whatsoever shall subsist or be deemed to subsist between the Authority or the GoHP on the one hand and any personnel engaged by the Operator on the other. No such personnel shall have, or claim, any right of absorption, regularisation, employment, engagement or continuity of service with the Authority or the GoHP at any time, whether during the OMM Period or upon Termination.

5.4.6 The Operator shall indemnify and keep indemnified the Authority and the GoHP against all claims, demands, proceedings, awards, orders, penalties, costs and expenses arising out of or in connection with any breach of labour, industrial or social security legislation by the Operator or its contractors, or any claim made by any personnel engaged by the Operator.

5.5 Utility Services and Taxes

5.5.1 The Operator shall be solely responsible for arranging, obtaining, maintaining and paying for all utility services required for the Property, including electricity, water, sewerage, gas, telecommunications, internet, solid waste management and effluent disposal, and shall pay all charges therefor, whether computed on the basis of usage or otherwise, directly to the concerned utility agencies as and when due.

5.5.2 Where any utility connection stands in the name of the Authority or the GoHP, the Operator shall reimburse and pay all charges relating thereto within 15 (fifteen) days of receipt of demand, and shall comply with all requirements stipulated by the concerned utility provider. The Operator shall, where permissible, apply for the transfer or mutation of such connections into its own name, at its own cost, and the Authority shall render reasonable assistance in that behalf.

5.5.3 The Operator may install and maintain sub-meters for the measurement of consumption in the Authority Reserved Accommodation and in the Operator Operational Accommodation, where the Authority so requires, and shall furnish consumption records to the Nodal Officer on a monthly basis.

5.5.4 The Operator shall bear and pay all Taxes, duties, cesses, levies and statutory impositions of every description, whether direct or indirect, in respect of the Project, the OMM Services, the Operator Created Assets and all payments made or received under this Contract, **including all Taxes applicable on the Annual Contract Fee, whether the same are payable by the Authority or by the Operator**, together with all applicable local levies and service charges.

5.5.5 Property Tax, if any, payable in respect of the Property shall in the first instance be paid by the Authority to the concerned Government Instrumentality. The Operator shall reimburse the Authority the amount of Property Tax so paid within 30 (thirty) days of receipt of a written demand from the Authority accompanied by evidence of payment. Any delay in such reimbursement shall attract interest at the rate specified in Clause 24.3.

5.5.6 The lease rent payable to the DDA under the Lease Deeds shall be the sole responsibility of the Authority, and shall not constitute a cost of the Operator.

5.5.7 The Operator shall deduct and deposit tax at source wherever required under Applicable Laws, and shall furnish the prescribed certificates to the Authority within the time stipulated by law.

5.5.8 The Operator shall be responsible for the correct and timely discharge of all GST obligations in relation to the Project, including registration, invoicing, filing of returns and payment of tax, and shall issue tax invoices to the Authority in a form which enables the Authority to avail of input tax credit, where available.

5.6 Accounts and Audit

5.6.1 The Operator shall maintain true, complete and accurate books of account, records, registers and supporting documents in respect of the Project in accordance with the Companies Act, 2013 or the Limited Liability Partnership Act, 2008, as applicable, the Income-tax Act, 1961, the GST legislation and the applicable accounting standards, and shall maintain separate project accounts in respect of the Project which distinguish the revenues and expenditure attributable to the Property from any other business of the Operator.

5.6.2 The Operator shall appoint Statutory Auditors and shall cause its accounts to be audited annually. The Operator shall furnish to the Authority, within 180 (one hundred and eighty) days of the close of each Accounting Year, its audited financial statements together with the auditors' report thereon, and a certificate of the Statutory Auditors setting out the Revenue Collections for that Accounting Year.

5.6.3 The Operator shall furnish to the Nodal Officer, within 30 (thirty) days of the end of each calendar quarter, an unaudited statement of Revenue Collections, occupancy statistics for the

Authority Reserved Accommodation and the Operator Operational Accommodation, and such other operational and financial information as the Authority may reasonably require.

5.6.4 The Authority shall have the right, at its own cost and upon reasonable prior notice, to cause the books of account, records and registers of the Operator relating to the Project to be inspected and audited by the Accountant General of Himachal Pradesh, by the Comptroller and Auditor General of India, or by a firm of chartered accountants appointed by the Authority, and the Operator shall render all necessary co-operation and assistance and provide access to all such books, records and documents.

5.6.5 The Operator shall preserve all books of account, records and supporting documents relating to the Project for a period of not less than 8 (eight) years from the close of the Accounting Year to which they relate, or for such longer period as may be required under Applicable Laws, and shall hand over copies thereof to the Authority upon Termination if so required.

5.7 Change in Ownership

5.7.1 For the purposes of this Contract, a **"Change in Ownership"** means any transfer, sale, disposal, dilution, allotment, issue, pledge, encumbrance or other alteration, whether direct or indirect and whether in a single transaction or a series of transactions, of or affecting the Equity Shareholding of the Operator, or the acquisition of control, directly or indirectly, over the Operator or over the composition of its Board of Directors (or, where the Operator is an LLP, over its management); and the circumstances in which a Change in Ownership shall require the prior written approval of the Authority are set out in this Clause 5.7.

5.7.2 The Operator undertakes, and shall procure that each Consortium Member maintains, Equity Shareholding in the Operator such that:

(a) until the 5th (fifth) anniversary of the Operations Date, the Selected Bidder (where the Selected Bidder is a single entity) shall hold 100% (one hundred per cent) of the Equity Shareholding of the Operator, or, where the Selected Bidder is a Consortium, the Consortium Members shall collectively hold 100% (one hundred per cent) of the Equity Shareholding of the Operator, with the Lead Member holding not less than 51% (fifty-one per cent) and the Other Member holding not less than 26% (twenty-six per cent) thereof; and

(b) thereafter for the balance of the OMM Period after the 5th (fifth) anniversary of the Operations Date, the Selected Bidder or, as the case may be, the Consortium Members shall collectively hold not less than 51% (fifty-one per cent) of the Equity Shareholding of the Operator, with the Lead Member holding not less than 26% (twenty-six per cent) thereof. Provided that any material variation, as compared to the representations made by the Selected Bidder during the bidding process for meeting the minimum conditions of eligibility or for the evaluation of its Bid, in the proportion of the Equity Shareholding of the Selected Bidder or of any Consortium Member to the total Equity Shareholding of the Operator, occurring prior to the expiry of the OMM Period, shall also constitute a Change in Ownership requiring the prior written approval of the Authority.

5.7.3 The Operator shall not, without the prior written approval of the Authority, undertake or permit any Change in Ownership that results, or would result, in a breach of Sub-Clause 5.7.2. Without prejudice to the foregoing, the Operator agrees and acknowledges that:

(a) any acquisition by any person, alone or with any person acting in concert, directly or indirectly (including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity Shareholding), of 25% (twenty-five per cent) or more in aggregate of the total Equity Shareholding of the Operator; or

(b) any acquisition, directly or indirectly, of control of the Board of Directors of the Operator (or, where the Operator is an LLP, of the management of the Operator) by any person, alone or with any person acting in concert,

5.7.4 It shall constitute a Change in Ownership requiring the prior written approval of the Authority from a national-security and public-interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Operator; and the Operator shall not give effect to any such acquisition without such prior approval. However, it is expressly agreed that approval of the Authority hereunder shall be limited to (i) national security and public interest perspective; and (ii) whether the proposed transaction would materially and adversely affect the continued and proper provision of the OMM Services at the Project Facility in accordance with this Contract, the Brand Standards and Good Industry Practice. The Authority shall endeavour to give its decision expeditiously.

5.7.5 It is agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator from any liability or obligation under this Contract.

5.7.6 For the purposes of Sub-Clause 5.7.3:

(a) the expressions "acquirer", "control" and "person acting in concert" shall have the meanings ascribed to them in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any statutory re-enactment thereof; and where the Operator is an LLP, those expressions shall apply as follows: (i) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire Equity Shareholding in, or control over, the Operator, whether by himself or together with any person acting in concert; (ii) "control" means the right or power, exercisable by a person alone or together with persons acting in concert, directly or indirectly, to appoint or remove designated partners in whom not less than one-half of the management or voting rights of the Operator vest, or otherwise to direct the management or policy decisions of the Operator, whether under the LLP agreement, by contract, by virtue of capital contribution, share in profits, voting or management rights, or in any other manner; and (iii) "person acting in concert" means a person who, with a common objective or purpose of acquiring Equity Shareholding in or control over the Operator, pursuant to an agreement or understanding, whether formal or informal, directly or indirectly cooperates for the acquisition of such Equity Shareholding in, or control over, the Operator;

(b) an indirect acquisition means the transfer of the direct or indirect beneficial ownership or control of any company or body corporate, in India or abroad, which results in the acquirer acquiring control over the Equity Shareholding or voting rights of the Operator; and

(c) **where the Operator is a limited liability partnership**, references to "Equity Shareholding" bear the meaning given in the Definitions; references to the "Board of Directors" and to "directors" shall be read as references to the management of the Operator and to its designated partners.

5.7.7 Any Change in Ownership effected in breach of this Clause 5.7 shall constitute an Operator Event of Default.

5.7.8 The Operator shall not, without the prior written approval of the Authority, undertake or permit any amalgamation, merger, demerger, arrangement, reconstruction, compromise, reduction of capital, conversion of legal form, or voluntary winding up; provided that the Authority's approval under this Clause 5.7 shall be limited (i) national security and public interest perspective; and (ii) whether the proposed transaction would materially and adversely affect the continued and proper provision of the OMM Services at the Project Facility in accordance with this Contract, the Brand Standards and Good Industry Practice.

5.7.9 The Operator shall furnish to the Authority, within 30 (thirty) days of the close of each Accounting Year, a certificate of its Statutory Auditors confirming compliance with this Clause 5.7.

5.8 Branding of Property

5.8.1 The Operator shall ensure that the name and branding of the Property at all times essentially includes the expression **"Himachal Niketan"**, in all promotional material, marketing material, branding material, signage, official communications and official documents, including all Applicable Permits, in relation to the Property and the Project.

5.8.2 The Operator shall be free to prefix or suffix its own Brand name or company name alongside the expression "Himachal Niketan", or to use the expression "Himachal Niketan" followed by the expression "Managed by [●]", where "[●]" denotes the Brand name of the Operator.

5.8.3 The Operator shall submit the proposed name, logo, signage design and branding treatment for the Property to the Authority for its prior written approval, not later than 30 (thirty) days prior to the Operations Date, and shall not alter the same thereafter without the prior written approval of the Authority.

5.8.4 The Operator shall not use the name, emblem, crest, logo or insignia of the GoHP, of the Authority or of the State of Himachal Pradesh, otherwise than as expressly permitted under this Clause 5.8 or with the prior written approval of the Authority, and shall not use any name or mark which is likely to cause confusion as to the ownership of the Property.

5.8.5 Nothing in this Contract shall be construed as granting to the Operator any right, title or interest in the expression "Himachal Niketan" or in any name, mark, emblem or insignia of the Authority or the GoHP, and all such rights shall vest exclusively with the Authority. Upon Termination, the Operator shall forthwith cease all use of the expression "Himachal Niketan" and of any name, mark, emblem or insignia of the Authority or the GoHP.

5.8.6 The Operator shall, upon Termination, and at its own cost, remove all its Brand names, marks, signage and branding material from the Property and make good any damage caused by such removal.

5.9 Negative Covenants

5.9.1 The Operator shall not, at any time during the Contract Period:

(a) create, or permit to subsist, any Encumbrance over the Property, the Plots and the Project Assets;

(b) assign, transfer, sub-licence, sub-let, part with possession of, or otherwise dispose of, the Property or any part thereof, or its rights or obligations under this Contract, save as permitted herein;

(c) undertake any structural alteration, addition, demolition or modification of the Property, or any work affecting the structural integrity of the Property, its external façade or the construction works undertaken by the GoHP. However, this exclusion shall not prejudice the right and the obligation of the Operator to undertake preventive and routine maintenance works including minor repair works, as may be required;

(d) change the use of the Property or any part thereof from that contemplated under this Contract;

(e) remove, dispose of, sell, scrap or write off any asset forming part of the Joint Inventory and Condition Report, save by way of replacement with an asset of equal or better specification, quality and value, duly recorded in the asset register and intimated to the Nodal Officer;

(f) permit any gambling, betting, prostitution, narcotics, or any unlawful, immoral, hazardous or offensive activity at or from the Property;

(g) serve or permit the service of liquor at the Property otherwise than under and in strict accordance with a valid excise licence and Applicable Laws, and not at all within, or for consumption in, the Authority Reserved Accommodation without the prior written approval of the Authority;

(h) engage in, or permit, the storage of any hazardous, inflammable or explosive substance at the Property, save such quantities of fuel, gas and cleaning materials as are ordinarily required for hotel operations and are stored in compliance with Applicable Laws;

(i) hold out, or permit any person to hold out, that the Operator is the owner of, or has any proprietary interest in, the Property;

(j) undertake any business or activity other than the Project;

(k) not employ or permit to be employed at the Property any person who is a minor in violation of applicable labour laws, nor any person with a criminal record or antecedents that render such person unsuitable for deployment at the Property; shall not knowingly allow the entry into, or presence within, any part of the Property of any person suffering from a contagious, loathsome or infectious disease; and shall at all times ensure strict compliance with applicable labour, health and safety laws and take immediate remedial action as required or directed by the Authority; or

(l) not do or omit to do any act, deed, matter or thing, which may, in any manner, be in violation of any of the provisions of this Contract or Applicable Law.

5.9.2 The Operator shall not make any public statement, press release or media communication concerning the Property, the Project or the Authority without the prior written approval of the Authority, save as required under Applicable Laws.

6. ESCROW ACCOUNT

6.1 Escrow Account

6.1.1 The Operator shall prior to the Effective Date, open and establish an Escrow Account with a Nationalised Bank or a Scheduled Commercial Bank in India acceptable to the Authority, and shall execute the Escrow Agreement with the Authority and the Escrow Bank substantially in the form set out at **Schedule-F**.

6.1.2 The Escrow Account shall be denominated in Indian Rupees and shall be operated in accordance with the Escrow Agreement and this Article 6. The nature and scope of the Escrow Account are fully described in the Escrow Agreement. The Operator hereby acknowledges and undertakes not to open or establish any other account other than the Escrow Account with any bank or body corporate for the receipt/ deposit of the inflows and receipts in relation to the Project.

6.1.3 The Operator shall bear all costs, fees, charges and expenses of the Escrow Bank in relation to the establishment, operation and maintenance of the Escrow Account.

6.1.4 The Operator may, with the prior written approval of the Authority, substitute the Escrow Bank in accordance with the Escrow Agreement, provided that the substitution shall take effect only upon a fresh escrow agreement, in the same form, coming into force with the substitute Escrow Bank.

6.1.5 In the event of any conflict or inconsistency between this Contract and the Escrow Agreement, the provisions of this Contract shall prevail.

6.1.6 All withdrawals from, and appropriations out of, the Escrow Account shall be made only in the manner, for the purposes, and in the order of priority set out in this Contract and the Escrow Agreement.

6.2 Deposits into Escrow Account

6.2.1 The Operator shall deposit, or cause to be deposited, into the Escrow Account:

(a) all proceeds, revenues, income and receipts of every nature whatsoever (whether in cash or on credit, and whether received directly or through any payment gateway, aggregator, agent or intermediary) derived directly or indirectly from the Operations and from the Property, including all Revenue Collections and all Usage Dues;

(b) all room charges realised in respect of the chargeable rooms comprised in the Authority Reserved Accommodation, and all amounts realised from the provision of F&B Services to Authority Designated Occupants;

(c) the proceeds of all insurance claims, other than claims in respect of loss of life or personal injury, in accordance with Clause 16.7;

(d) any payments received by the Operator from the Authority, after deduction of any outstanding Annual Contract Fee;

(e) all funds received by the Operator from its shareholders/ partners' contribution, in any manner or form; and

(f) such other amounts as the Operator may, at its option, deposit therein, whereupon the provisions of this Article 6 and of the Escrow Agreement shall apply to such deposits.

6.2.2 The Operator shall procure that in each insurance policy taken out under Article 16, the Authority is named as the loss payee and that the insurer pays the proceeds of insurance into the Escrow Account.

6.2.3 The Operator shall ensure that no revenue, receipt or collection arising from the Property is routed through, retained in, or deposited into any account other than the Escrow Account.

6.2.4 All interest accruing on the balances in the Escrow Account shall be credited to the Escrow Account.

6.3 Withdrawals during the OMM Period

6.3.1 At the beginning of every month or quarter, or at such shorter or longer intervals as the Operator may by written instruction determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order of priority for making due payments, and if any such payment is not due in that month or quarter, shall retain such monies in the Escrow Account and pay out therefrom on the relevant payment date:

(a) all statutory payments and Taxes due and payable by the Operator for and in respect of the Project;

(b) the Annual Contract Fee when due and payable to the Authority together with any interest payable thereon under Sub-Clause 14.2.6;

(c) the second and final instalment of the Upfront OMM Contract Amount, as and when due and payable, together with any interest, if any, payable thereon under Sub-Clause 14.2.9; and

(d) all other payments due and payable to the Authority pursuant to this Contract, including Damages, reimbursements and recoveries; and

(e) the balance, if any, in accordance with the instructions of the Operator.

6.3.2 The Parties acknowledge and agree that payment of Taxes and other statutory dues and liabilities payable by the Operator in respect of the Property and its operation, followed by payment of the Annual Contract Fee and of any other payments due to the Authority under this Contract, shall have priority over all other payments out of the Escrow Account.

6.3.3 Not later than 60 (sixty) days prior to the commencement of each Financial Year, the Operator shall provide to the Escrow Bank, with a copy to the Authority, particulars of the amounts likely to be required for each of the payment obligations set out in Sub-Clause 6.3.1, which particulars may be modified subsequently if fresh information received during the course of the year makes such modification necessary.

6.3.4 If the funds available in the Escrow Account are insufficient to meet all the requirements set out in Sub-Clause 6.3.1, the Escrow Bank shall apply such funds in the serial order of priority set out therein until exhaustion thereof, and the Operator shall forthwith make good the shortfall.

6.4 Withdrawals upon Termination

6.4.1 Upon expiry or earlier Termination of this Contract, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything to the contrary contained herein or in the Escrow Agreement, be appropriated and dealt with in the following order of priority:

(a) payroll dues, statutory payments and all Taxes due and payable by the Operator for and in respect of the Project;

(b) the outstanding Annual Contract Fee together with any interest payable thereon under Sub-Clause 14.2.6;

(c) any outstanding instalment of the Upfront OMM Contract Amount, together with any interest accrued thereon under Sub-Clause 14.2.9;

(d) all other amounts outstanding and payable by the Operator to the Authority as on the date of expiry or earlier Termination;

(e) all payments as may be due and payable to the Authority pursuant to this Contract, including Damages and recoveries under Clause 7.3; and

(f) the balance, if any, in accordance with the instructions of the Operator.

6.4.2 The Escrow Account shall be closed only after all outstanding amounts payable by the Operator under this Contract have been discharged in full and the Authority has issued the Vesting Certificate under Clause 20.5.

6.5 Authority's First Charge

The Authority shall have a first and exclusive charge on all balances in the Escrow Account and on all amounts due and payable by the Operator to the Authority, and the Authority shall be entitled to enforce the charge through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Operator. The Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential liabilities that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Operator hereunder shall be liable to appropriation

7. COVENANTS AND RIGHTS OF THE AUTHORITY

7.1 Authority's Covenants

7.1.1 The Authority shall:

(a) hand over the Property to the Operator on the Effective Date on an *'as-is-where-is'* basis, free of Encumbrances, in accordance with Clause 3.2;

(b) appoint a Nodal Officer prior to the Effective Date in accordance with Clause 13.1, and notify the particulars thereof to the Operator;

(c) render such reasonable assistance to the Operator as the Operator may require in obtaining the Applicable Permits, provided that the responsibility for obtaining, maintaining and renewing all Applicable Permits shall at all times remain solely with the Operator, and the Authority shall bear no liability for any delay, refusal or revocation in respect thereof;

(d) pay the lease rent payable to the DDA under the Lease Deeds, and pay the Property Tax in respect of the Property to the concerned Government Instrumentality which shall be then reimbursed by the Operator under Sub-Clause 5.5.5;

(e) not, during the OMM Period, grant to any third party any right to operate, manage or maintain the Property in derogation of the rights granted to the Operator under this Contract;

(f) provide copies to the Operator of all approvals, certificates, occupancy certificate (OC), completion certificates, statutory approvals, architectural, structural and MEP drawings, execution drawings, as-built drawings, plans, specifications, operation and maintenance manuals, details of existing Annual Maintenance Contracts (AMCs), contractor details together with applicable Defect Liability Period (DLP) terms, warranties and guarantees, and such other records and documents relating to the Property as are available with the Authority as on the Effective Date; and shall, to the extent assignable, assign or otherwise pass through to the Operator the benefit of all defect-liability obligations, warranties and guarantees of the contractors who executed the base-build works constructed by the GoHP, and shall remain responsible, during the subsistence of the applicable Defect Liability Period, for any Structural Defect that is not capable of being so passed through;

(g) be solely responsible for and shall bear and discharge all Taxes, unpaid utility bills and all other charges or liabilities of any nature whatsoever for or in relation to the Property that pertain to the period prior to the Effective Date;

(h) not do or omit to do any act, deed or thing which materially prevents, restricts or adversely affects the Operator's ability to exercise its rights or perform its obligations under this Contract, except to the extent necessary for exercise of the Authority's rights under this Contract, protection of public interest, public safety, security or compliance with Applicable Laws;

(i) to convey its decision expeditiously on the request of the Operator with regard to any decision sought on any works requiring prior approval under this Contract. If some specified time period has been specified in the Contract for the Authority for responding then within such specified time limit and where no time limit has been specified then within a period no longer than 15 (fifteen) days. Provided that nothing

contained herein shall render the Authority liable for any loss, delay, cost, damage or claim suffered by the Operator on account of any delay in grant of approval, except to the extent expressly provided in this Contract;

(j) provide all reasonable assistance, in its capacity as the owner of the State Guest House – Himachal Niketan, for obtaining or renewing operational approvals, licences and statutory clearances, and sign and return the relevant application forms within 7 (seven) Business Days of their submission by the Operator;

(k) endeavour to provide all reasonable cooperation and support to the Operator to facilitate the operation and management of the Property in accordance with this Contract.

(l) act reasonably and in good faith in the exercise of its rights and the discharge of its obligations under this Contract.

7.1.2 Notwithstanding anything contained in this Contract, where any Structural Defect affecting the structural integrity, stability or safety of the Property or any part thereof is identified and such Structural Defect is not attributable to any act, omission, negligence, default or breach of the Operator or any failure by the Operator to perform its obligations under this Contract, the Authority shall, subject to Sub-Clause 7.1.3, be responsible for carrying out, or procuring the carrying out of, the structural repairs, rectification or remedial works reasonably necessary to remedy such Structural Defect, at its own cost and expense

7.1.3 The Operator shall promptly notify the Authority upon becoming aware of any Structural Defect referred to in Sub-Clause 7.1.2 and shall provide the Authority and its authorised representatives reasonable access and assistance for inspection, assessment and rectification of such Structural Defect. For the avoidance of doubt, where any Structural Defect is attributable to any act, omission, negligence, default or breach of the Operator or any failure by the Operator to perform its obligations under this Contract, the Operator shall be responsible for the rectification thereof at its own cost and expense.

7.1.4 Except in respect of any obligation expressly allocated to the Authority under this Contract, including its obligations in respect of Structural Defects under Sub-Clauses 7.1.1(f) and 7.1.2, the Authority shall have no obligation, financial or otherwise, in relation to the Project, the Furnishing Works, the OMM Services or the operation of the Property, and shall not be liable to bear or reimburse any cost, charge, expense, liability or loss incurred by the Operator or any loss of revenue, loss of profit, business interruption, delay costs or other losses suffered by the Operator arising out of any decision, review, inspection, approval process or exercise of powers by the Authority under this Contract.

7.2 Powers of the Authority

7.2.1 Without prejudice to any other right or remedy available to it under this Contract and Applicable Law, the Authority or its authorized representative(s) including the Nodal Officer (as the case may be), shall have the powers set out in this Contract or any other powers required for the proper implementation of the Project, including, (without limitation):

(a) to monitor and review the performance of the Operator and its compliance with this Contract, and to require the Operator to furnish such records, statements, reports, returns and information as it may reasonably require;

(b) to inspect the Property, the Project Assets and the Authority Reserved Accommodation in accordance with Clause 12.4, and if required, to cause tests, audits, surveys and structural assessments to be carried out;

(c) to issue directions to the Operator for the remedying of any breach, default, deficiency, defect, damage or non-compliance for which the Operator is responsible under this Contract, and to require the Operator to comply therewith within the time stipulated;

(d) to revise, from time to time, the per-day charges applicable to the Authority Reserved Accommodation and the menu and rates applicable to F&B Services as specified in **Schedule-H**, provided to Authority Designated Occupants, in accordance with Article 15;

(e) to levy and recover Damages in accordance with this Contract;

(f) to appropriate the Performance Security in accordance with Clause 10.2;

(g) to exercise the step-in and remedial rights set out in Clause 7.3;

(h) to withdraw amounts from, and enforce its charge over, the Escrow Account in accordance with Article 6; and

(i) to terminate this Contract in accordance with Article 19.

Provided that the powers set out in sub-clauses (e) to (i) of this Sub-Clause 7.2.1 namely the decision to levy Damages, the appropriation of the Performance Security, the exercise of step-in rights, the withdrawal of amounts from the Escrow Account and the termination of this Contract shall be exercisable only by the Authority acting through the Secretary (General Administration), GoHP, and not by the Nodal Officer.

7.2.2 The Authority or its authorized representative(s) including the Nodal Officer shall not supervise or interfere with the day-to-day operation, management, staffing, housekeeping, maintenance schedules, operational policies, guest services, pricing or other routine operational matters of the Property, except to the extent applicable to the Authority Reserved Accommodation and except in the exercise of the rights expressly conferred by this Contract. For the avoidance of doubt, the exercise of any step-in right by the Authority under Clause 7.3 shall be limited to the circumstances and extent expressly permitted under that Clause and shall not confer upon the Authority any general right to assume or interfere with the day-to-day operation or management of the Property.

7.2.3 The exercise, or failure or delay in the exercise, by the Authority of any power, right or remedy under this Contract shall not relieve the Operator of any of its obligations, nor shall it constitute a waiver of any right of the Authority, nor shall it give rise to any liability on the part of the Authority. Provided that nothing contained herein shall relieve the Authority of any express obligation or liability expressly allocated to it under this Contract, including in respect of Structural Defects under Sub-Clauses 7.1.1(f) and 7.1.2.

7.3 Authority Step-In Rights

7.3.1 Without prejudice to its other rights and remedies under this Contract, the Authority may exercise its step-in rights under this Clause 7.3 only in the event of an Emergency where the Authority reasonably determines on objective ground that immediate intervention is necessary to prevent or mitigate the Emergency that poses an imminent threat to life and Property and the Operator has failed to initiate any remedial steps, despite notice from the Authority, to take

such immediate remedial or protective measures as are reasonably necessary to address the Emergency within the time reasonably specified by the Authority having regard to the nature and urgency of the Emergency. Where, having regard to the circumstances posing imminent threat to human life and safety, prior notice is not reasonably practicable, the Authority may exercise such step-in rights without prior notice. For the avoidance of doubt, the existence of a defect, damage, deterioration, deferred maintenance, replacement requirement, unsafe condition or non-compliance, or the Operator's failure to remedy the same within the applicable cure period, shall not, by itself entitle the Authority to exercise step-in rights under this Clause 7.3 except when the same constitute an Emergency.

7.3.2 Where the conditions specified in Sub-Clause 7.3.1 are satisfied, the Authority may, upon written notice to the Operator, or immediately and without notice where prior notice is not reasonably practicable in the circumstances of Emergency, take such measures as are reasonably necessary to address the Emergency, including carrying out or procuring the carrying out of the relevant repairs, rectification, protective measures or other remedial work. The Authority's exercise of step-in rights shall, to the extent reasonably practicable, be strictly limited in scope and duration to the measures necessary to address the immediate/ relevant Emergency, and the Authority shall cease such step-in as soon as the Emergency has been addressed or the Operator is reasonably able to resume responsibility for the relevant matter.

7.3.3 Where the Authority lawful exercises its step-in rights in respect of a matter for which the Operator is solely responsible under this Contract, all reasonable and properly documented direct costs and expenses incurred by the Authority in connection with such step-in shall be recoverable from the Operator **at 110% (one hundred and ten per cent) of the cost so incurred**. Provided that no costs or expenses incurred by the Authority in rectifying a Structural Defect for which the Authority is responsible under this Contract shall be recoverable from the Operator.

7.3.4 Amounts payable by the Operator under this Clause 7.3 shall be paid within 15 (fifteen) days of demand and, failing such payment, shall be recoverable by the Authority by withdrawal from the Escrow Account, by appropriation of the Performance Security, by deduction from any amount payable by the Authority to the Operator, or as arrears of land revenue.

7.3.5 The exercise by the Authority of its rights under this Clause 7.3 shall be without prejudice to, and shall not limit, any other right or remedy available to the Authority under this Contract or in law, including the right to terminate this Contract under Article 19, and shall not relieve the Operator of any of its obligations hereunder.

7.3.6 The Authority shall not be liable to the Operator for any loss of revenue, business interruption or other loss arising solely from the Authority's lawful exercise of its step-in rights under this Clause 7.3, provided that this shall not exclude or limit liability to the extent arising from the Authority's exercise of step-in rights beyond the scope reasonably necessary to address the relevant Emergency.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Operator

8.1.1 The Operator represents and warrants to the Authority that, as at the Contract Date and throughout the Contract Period:

(a) it is duly incorporated or registered and validly existing under the laws of India, and has full power, authority and capacity to execute, deliver and perform this Contract;

(b) the execution, delivery and performance of this Contract have been duly authorised by all necessary corporate, partnership or other action, and this Contract constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(c) the execution, delivery and performance of this Contract does not and will not conflict with, or constitute a default under, its constitutional documents, any Applicable Law, or any agreement, instrument, judgment, decree or order binding upon it;

(d) it has the financial standing, technical capacity, managerial competence, personnel and resources necessary to perform the OMM Services, and satisfies the eligibility and qualification requirements set out in the RFP;

(e) all information, documents, statements and representations furnished by it, by the Selected Bidder and by the members of the consortium (if any) in the Bid and during the Bidding Process were and are true, complete, accurate and not misleading in any material respect, and no material fact has been suppressed or withheld;

(f) no proceeding for its liquidation, winding up, insolvency, resolution, dissolution, receivership or administration has been commenced or is pending, and no receiver, liquidator, resolution professional or administrator has been appointed in respect of it or any of its assets;

(g) it is not in default under any Applicable Law, and no order, judgment or decree has been passed against it which would materially and adversely affect its ability to perform this Contract;

(h) neither it, nor the Selected Bidder, nor any member of the consortium (if any), nor any of their respective directors, partners, promoters or key managerial personnel has been convicted of any offence involving moral turpitude or economic offence, or has been declared ineligible, blacklisted or debarred by any Government Instrumentality;

(i) it has not, directly or indirectly, offered, given, promised or agreed to give any inducement, gratification, bribe, commission or reward to any person for or in connection with the award of the Project;

(j) it has satisfied itself as to the nature, extent, condition, adequacy and sufficiency of the Property, the facilities, amenities and various assets existing thereat, and as to all matters affecting the performance of the obligations of the Operator under this Contract;

(k) it shall at no time undertake or permit any Change in Ownership except as permitted under this Contract;

(l) each member of the Consortium, if applicable, is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to

enter into this Contract with the Operator pursuant to the LOA; and has agreed to unconditionally accept the terms and conditions set forth in this Contract; and

(m) it has no interest, and shall not acquire any interest, which conflicts or may conflict with the performance of its obligations under this Contract.

8.1.2 The Operator undertakes to notify the Authority forthwith upon becoming aware of any fact, matter or circumstance which renders, or is likely to render, any of the representations and warranties in Sub-Clause 8.1.1 untrue, inaccurate or misleading.

8.2 Representations and Warranties of the Authority

8.2.1 The Authority represents and warrants to the Operator that, as at the Contract Date:

(a) it has full power and authority to execute, deliver and perform this Contract, and has taken all necessary action to authorise the execution, delivery and performance hereof;

(b) this Contract constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(c) the GoHP holds the Plots on perpetual leasehold basis and the Property has been developed and constructed thereon by the GoHP;

(d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Contract;

(e) upon the Operator performing all the covenants herein, it shall not at any time during the period of the OMM, interfere with peaceful enjoyment of the Property by the Operator, exceptin accordance with the provisions of this Contract; and

(f) as at the Effective Date, there will be no Encumbrance subsisting on the Property which would prevent the Operator from providing the OMM Services in accordance with this Contract.

8.2.2 Save as expressly set out in Sub-Clause 8.2.1, the Authority makes no representation or warranty of any nature whatsoever, whether express or implied, in relation to the Property, the facilities, amenities and various assets existing thereat, the Bidding Documents or the Project, and the provisions of Article 9 shall apply.

8.3 Disclosure

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

9. DISCLAIMER

9.1 Disclaimer

9.1.1 The Operator acknowledges and agrees that, prior to the submission of its Bid and prior to the execution of this Contract, it has, after a complete and careful examination, made an independent evaluation of the Bidding Documents, the Property, the facilities, amenities and various assets existing thereat, the scope of the OMM Services, the market, the demand, the operating conditions, the Applicable Laws, the Applicable Permits and all other matters, information, factors and circumstances which may affect its rights, obligations, costs, revenues and returns under this Contract, and has determined to its own satisfaction the accuracy, adequacy, sufficiency and completeness thereof.

9.1.2 The Operator acknowledges and agrees that it has not relied upon, and shall not be entitled to rely upon, any statement, representation, warranty, data, information, drawing, report, study, projection, estimate or forecast made, provided or furnished by or on behalf of the Authority, HPIDB, the GoHP, or any of their respective officers, employees, agents, advisers or consultants, whether in the RFP, in any pre-bid clarification, at any site visit, or otherwise (collectively, the **"Disclaimed Material"**).

9.1.3 The Authority, HPIDB and the GoHP make no representation or warranty, and assume no responsibility or liability whatsoever, as to the accuracy, adequacy, correctness, completeness, reasonableness or reliability of the Disclaimed Material, or as to the condition, quality, adequacy, suitability, sufficiency or fitness of the Property for the purpose herein, or as to the availability of Applicable Permits, or as to the financial viability, occupancy, revenue, profitability or returns of the Project.

9.1.4 The Operator shall have no claim of any nature whatsoever against the Authority, HPIDB or the GoHP, and shall not be entitled to any relief, extension of time, additional cost, compensation, Damages or termination, on account of:

(a) any inaccuracy, inadequacy, insufficiency, incompleteness, error, omission or misdescription in the Disclaimed Material;

(b) the condition, state, adequacy or suitability of the Property and the Handover Assets, facilities and amenities existing thereat as at the Effective Date;

(c) any latent or patent defect in the Property or the Project Assets, whether discoverable on inspection or not, save that this sub-clause (c) shall not exclude the Authority's responsibility for a Structural Defect to the extent provided in Sub-Clauses 7.1.1(f) and 12.2.1(d);

(d) any variance between the actual and the assumed or projected occupancy, revenue, cost, tariff or return;

(e) any delay, refusal, revocation, suspension or conditionality in respect of any Applicable Permit; or

(f) any change in market, economic, competitive, technological or commercial conditions.

9.1.5 The Operator confirms that it has entered into this Contract on the basis of its own investigation, judgment and assessment of the risks, contingencies and circumstances affecting the Project, and that it has made allowance therefor in the Annual Contract Fee quoted by it and in the Upfront OMM Contract Amount.

9.1.6 This Article 9 shall survive the Termination of this Contract.

10. PERFORMANCE SECURITY

10.1 Performance Security

10.1.1 The Operator has, prior to the execution of this Contract, furnished to the Authority an unconditional, irrevocable and on-demand bank guarantee issued by a Nationalised Bank or a Scheduled Commercial Bank in India, in the form set out at **Schedule-E**, for an amount equal to **100% (one hundred per cent) of the Annual Contract Fee** quoted by the Selected Bidder and accepted by HPIDB, being INR [●] (Indian Rupees [●] only), as security for the due and faithful performance of the Operator's obligations under this Contract (the **"Performance Security"**), receipt of which the Authority hereby acknowledges.

10.1.2 The Performance Security shall be valid during the entire Contract Period, and shall be renewed, replaced or extended by the Operator not later than 60 (sixty) days prior to its expiry, so as to remain valid and subsisting at all times until 6 (six) months after the Divestment Date.

10.1.3 If, at any time, the Performance Security is appropriated in whole or in part by the Authority, the Operator shall, within 15 (fifteen) days of such appropriation, replenish or restore the Performance Security to its full value, failing which the same shall constitute an Operator Event of Default. The provisions of this Article shall apply mutatis mutandis to such fresh Performance Security. The Operator's failure to comply with this provision shall constitute an Operator Event of Default, which shall entitle the Authority to terminate this OMM Contract in accordance with the provisions hereof.

10.1.4 Failure by the Operator to furnish, renew, replace, extend, enhance or replenish the Performance Security in accordance with this Clause 10.1 shall constitute an Operator Event of Default, and shall entitle the Authority, without prejudice to its other rights, to encash the subsisting Performance Security in full.

10.1.5 The Performance Security shall not carry any interest in favour of the Operator, and the Operator shall bear all costs, commissions and charges in relation thereto.

10.2 Appropriation of Performance Security

10.2.1 In the event, the Operator is in default or breach of the due, faithful and punctual performance of its obligations under this Contract or if there are any claims or demands whatsoever whether liquidated or otherwise against the Operator under this Contract, the Authority shall, without prejudice to its other rights and remedies hereunder or in Applicable Law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of obligations/ services within the time period specified herein, or in respect of any dues, demands, damages or claims against the Operator.

10.2.2 The decision of the Authority as to any breach or default having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator and the Operator 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 OMM Contract is required to be provided in connection with any demand made by the Authority to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Contract.

10.2.3 The appropriation of the Performance Security shall be without prejudice to, and shall not be in substitution for or in limitation of, any other right or remedy of the Authority, and shall not relieve the Operator of any of its obligations or liabilities under this Contract.

10.3 Release of Performance Security

10.3.1 The Performance Security shall be released and returned to the Operator within 60 (sixty) days after the later of: (a) the Divestment Date; and (b) the date on which the Operator has fully discharged all its obligations and liabilities under this Contract, including the Divestment Requirements, and the Authority has issued the Vesting Certificate under Clause 20.5.

10.3.2 The Authority shall be entitled to withhold from the release of the Performance Security such amount as may be necessary to meet any subsisting claim, liability, Damages or unremedied breach of the Operator, and to appropriate the same in accordance with Clause 10.2.

10.3.3 No interest shall be payable by the Authority on the Performance Security or on any amount withheld under Sub-Clause 10.3.2.

11. FURNISHING WORKS AND OPERATIONS DATE

11.1 Furnishing Period

11.1.1 Subject to Clause 18.6.3, the Operator shall undertake, execute and complete the Furnishing Works, and make the Property fully operational in all respects, within a period of 3 (three) months commencing from the Effective Date (the **"Furnishing Period"**).

11.1.2 Whether or not the Operator has completed the Furnishing Works within the Furnishing Period as specified above, it shall not affect the liability of the Operator to pay the balance Upfront OMM Contract Amount and/ or Annual Contract Fee in accordance with Article 14.

11.1.3 The Furnishing Period is comprised within, and does not extend, the OMM Period.

11.1.4 The Furnishing Works shall be executed:

(a) at the sole cost, risk and expense of the Operator, and as an operating expense of the Operator, without any liability whatsoever on the Authority;

(b) in accordance with the Brand Standards, Good Industry Practice, Applicable Laws and Applicable Permits, and using new and premium quality materials;

(c) so as not to affect the structural integrity of the Property, its external façade or the construction works undertaken by the GoHP, and without any structural alteration, addition, demolition or modification whatsoever; and

(d) in a manner which does not damage, deface or impair the Property or causes any structural damage which shall be rectified and repaired by the Operator at its own cost to the satisfaction of the Authority.

11.1.5 While carrying out the Furnishing Works, the Operator shall ensure that such works does not result in any structural damage to the existing Property, structures, utilities, installations, fixtures, fittings, equipment or other assets and the Operator shall not break or demolish any part of the Property premises, or make any act or omission that would result in deterioration of the aesthetic value of Himachal Niketan, and shall take all reasonable measures to protect the existing Property assets from loss, damage or deterioration. In the event any such damage is caused, the Operator shall promptly repair, restore or replace the affected asset to the satisfaction of the Authority and at its sole risk and cost. If the Operator fails to repair, restore or replace such damage within the time specified by the Authority, the Authority may undertake such repair, restoration or replacement at the risk and cost of the Operator, and recover from the Operator an amount equal to 110% (one hundred and ten per cent) of the actual cost incurred by the Authority without prejudice to its other rights and remedies under this Contract.

11.1.6 The Operator shall obtain and maintain a comprehensive building insurance policy covering the entire Property premises against fire, earthquake, other natural calamities, theft, robbery and such other insurable risks as may be reasonably stipulated by the Authority, prior to commencement of any Furnishing Works.

11.2 Pre-Requirements for the Operations Date

11.2.1 The Operator shall not commence the Operations, and shall not open the Property to Users, unless and until it has:

(a) completed the Furnishing Works in accordance with Clause 11.1;

(b) achieved readiness of the Authority Reserved Accommodation along with other necessary facilities to cater to the Authority Reserved Accommodation (such as kitchen, restaurant, common areas, etc.) to the reasonable satisfaction of the Authority in accordance with Clause 11.3;

(c) obtained and holds all valid and unconditional Applicable Permits required to lawfully operate and occupy the Property, including the fire safety clearance / no-objection certificate, bar and excise licence[1] (where applicable), Delhi Pollution Control Committee approvals, eating house licence, health trade licence, food safety approvals under the Food Safety and Standards Act, 2006 (FSSAI), lift licence, police clearance and labour law registrations;

(d) put in place all insurance policies required under Article 16, and paid the premia thereon;

(e) opened and established the Escrow Account and executed the Escrow Agreement in accordance with Article 6;

(f) installed and commissioned the hospitality technology systems referred to in Sub-Clause 2.1.2(b);

(g) obtained the approval of the Authority to the branding, name and signage of the Property under Clause 5.8; and

(h) delivered to the Nodal Officer a written notice certifying compliance with sub-clauses (a) to (g) above, together with the supporting documents.

11.2.2 The Authority and the Nodal Officer shall have the right, prior to the opening of the Property, to inspect the Property and to inspect the original documents of all such Applicable Permits and insurance policies, so as to confirm, audit and verify their authenticity, validity, subsistence and compliance.

11.2.3 The Authority shall, within 15 (fifteen) days of receipt of the notice under Sub-Clause 11.2.1(h), either confirm that the pre-requirements have been satisfied or notify the Operator of the deficiencies to be remedied. The Operator shall remedy such deficiencies and re-submit its notice, and this process shall be repeated until the pre-requirements are satisfied.

11.2.4 Any delay in the satisfaction of the pre-requirements under this Clause 11.2 shall be to the account of the Operator, and shall not entitle the Operator to any extension of the OMM Period, any deferment of the Annual Contract Fee, or any relief, compensation or Damages.

11.3 Readiness of Authority Reserved Accommodation

11.3.1 The Operator shall ensure that, on or before the expiry of the Furnishing Period, the Authority Reserved Accommodation is fully furnished, equipped, serviced and ready for occupation and use by Authority Designated Occupants, and that the standard and quality of furnishing, fit-out, FF&E, OS&E, amenities and services provided therein is equal to, and at par with, that provided in the Operator Operational Accommodation, in conformity with the Brand Standards. Any non-compliance in this aspect shall be breach of Operator's covenant under this Contract.

[1] Not required if the Operator is not intending to serve liquor immediately on announcing of Operations Date; Bar license can be obtained later also.

11.3.2 The Nodal Officer shall, upon notice from the Operator, inspect the Authority Reserved Accommodation and shall record in writing whether readiness has been achieved to the reasonable satisfaction of the Authority. Where readiness has not been achieved, the Nodal Officer shall specify the deficiencies, and the Operator shall remedy the same within the time stipulated.

11.3.3 The Operator shall not commence, and the Authority shall not be obliged to permit, the Operations in respect of the Operator Operational Accommodation unless and until readiness of the Authority Reserved Accommodation has been so recorded.

11.3.4 The Authority shall be entitled to require the Operator to remedy any deficiency in the Authority Reserved Accommodation at any time during the OMM Period, and the provisions of Clause 7.3 shall apply to any failure to do so.

11.4 Commencement of Operations (Operations Date)

11.4.1 Upon satisfaction of the pre-requirements set out in Clause 11.2 and of the readiness requirement set out in Clause 11.3, the Authority shall issue to the Operator a written confirmation to the Operator stating its no objection to the Operator. The Operator shall, by not less than 5 (five) days' prior written notice to the Authority, declare a date as the date of commencement of Operations (the "**Operations Date**"), which date shall in any event be not later than 15 (fifteen) days from the date of the Authority's written no-objection. If the Operator fails to declare the Operations Date within the said period, the Operations Date shall be deemed to have occurred on the expiry of the 15th (fifteenth) day from the date of the Authority's written no-objection. For the avoidance of doubt, nothing in this Sub-Clause shall defer the Fee Commencement Date determined under Sub-Clause 14.2.2.

11.4.2 With effect from the Operations Date, the Operator shall commence and thereafter continue, without interruption, the operation, maintenance and management of the Property and the provision of the OMM Services to Users, in accordance with this Contract.

11.4.3 The Authority may, notwithstanding that the pre-requirements have not been fully satisfied, permit the Operator to commence the Operations in respect of such part of the Property as it may specify, subject to such conditions as it may impose; and any such permission shall not amount to a waiver of any requirement of this Article 11.

12. OPERATIONS AND MAINTENANCE (O&M)

12.1 Commencement and Duration

12.1.1 The obligations of the Operator under this Article 12 shall commence on the Operations Date and shall continue till the expiry of this Contract (the **"O&M Period"**).

12.1.2 The Operator shall keep the Property open, operational and available to Users throughout the O&M Period, on all days of the year and at all hours, save for such closures as are necessary for maintenance and are undertaken with the prior written approval of the Nodal Officer, or as are required by any Government Instrumentality or by reason of a Force Majeure Event.

12.1.3 No closure of the Property, or of any material part thereof, shall in any circumstance affect the availability of the Authority Reserved Accommodation, in respect of which the provisions of Clause 15.1 shall apply.

12.2 Obligations of the Operator during the O&M Period

12.2.1 During the O&M Period, the Operator shall, at its own cost, risk and expense:

(a) operate, manage and maintain the Property and the Project Assets in accordance with the Brand Standards, Good Industry Practice, Applicable Laws and Applicable Permits, and to a standard not below the Brand Standards;

(b) provide all accommodation, hospitality, front office, housekeeping, laundry, F&B, banquet, conference, event, guest relations, concierge, security, parking, facility management and ancillary services required for the safe, efficient and uninterrupted functioning of the Property;

(c) undertake all routine, preventive, periodic and corrective maintenance in accordance with a documented planned preventive maintenance schedule, covering civil, electrical, mechanical, plumbing, HVAC, fire safety, lift, water supply, sewerage, drainage, horticulture and landscaping works;

(d) promptly repair, rectify, replace or refurbish any defect, damage, deterioration, breakdown or failure. The Operator shall maintain adequate stocks of spares and consumables for that purpose, provided that the Operator shall not be responsible for rectifying any Structural Defect save to the extent that the cost thereof is covered by, and recoverable under, the base-build warranties and Defect Liability Period passed through to it under Sub-Clause 7.1.1(f);

(e) maintain and keep updated a fixed asset register in respect of the Project Assets and the Operator Created Assets, recording all additions, replacements, upgradations and disposals, and make the same available to the Nodal Officer;

(f) maintain all Applicable Permits and annual maintenance contracts in force, and comply with all conditions thereof;

(g) maintain the cleanliness, hygiene, sanitation, pest control, waste management and aesthetic upkeep of the Property, including the landscaped and open areas, parking areas and the external and internal common areas;

(h) ensure that the quality of services, F&B, housekeeping, linen, amenities and guest experience made available to the Authority Designated Occupants is similar to, and at

par with, that made available to other guests occupying the Operator Operational Accommodation;

(i) maintain the Insurance Cover required under Article 16 in full force and effect;

(j) deposit all Revenue Collections into the Escrow Account and make all payments in accordance with Article 6;

(k) pay the Annual Contract Fee and all other amounts payable to the Authority as and when due; and

(l) comply with all directions of the Authority and the Nodal Officer issued in accordance with this Contract.

12.2.2 The Operator shall, not later than 30 (thirty) days prior to the commencement of each Accounting Year, submit to the Nodal Officer an annual operations and maintenance plan for the ensuing Accounting Year, setting out the proposed preventive maintenance schedule, the proposed replacement and refurbishment programme, and the proposed staffing plan.

12.2.3 The Operator in keeping with its Brand Standards, undertake comprehensive refurbishment of the Property, including the Authority Reserved Accommodation, at such intervals as per its Brand Standards, during the OMM Period, so as to maintain the Property at the standards required under this Contract. The scope of each such refurbishment shall be intimated to the Authority not less than 90 (ninety) days in advance.

12.2.4 The Operator shall not, during the O&M Period, reduce, curtail, discontinue or suspend any service, facility or amenity available at the Property without the prior written approval of the Authority.

12.3 Grievance Redressal

12.3.1 The Operator shall establish, and shall notify to the Authority within 30 (thirty) days of the Operations Date, a dedicated grievance redressal mechanism for complaints, grievances and service requests by guests including of Authority Designated Occupants, including a dedicated telephone number, e-mail address, a physical complaint register maintained at the front office, and a nominated grievance redressal officer of appropriate seniority.

12.3.2 The Operator shall acknowledge every grievance within 6 (six) hours of its receipt and shall redress the same:

(a) within 12 (twelve) hours, where the grievance relates to housekeeping, linen, F&B service, or the working condition of in-room equipment; and

(b) within 48 (forty-eight) hours, in any other case,

failing which the Operator shall report the matter (only in case of Authority Reserved Accommodation and/ or any complaint made by Authority Designated Occupants) to the Nodal Officer together with the reasons for the delay and the proposed remedial action.

12.3.3 The Operator shall maintain a register of all grievances received and of the action taken thereon, and shall furnish to the Nodal Officer a monthly report relating to the Authority Reserved Accommodation in such form as the Authority may prescribe.

12.3.4 The Nodal Officer may issue such directions to the Operator in relation to the redressal of grievances of Authority Designated Occupants as the Nodal Officer may consider necessary, and the Operator shall comply therewith.

12.4 Inspection, Reporting and Remedial Measures

12.4.1 The Authority and the Nodal Officer, and such technical experts, consultants, chartered engineers or agencies as they may appoint, shall be entitled to inspect the Property, the Project Assets and the records of the Operator to the extent reasonably relevant to the matters specified in Sub-Clause 12.4.2, at any reasonable time, upon reasonable prior notice, and immediately and without notice in the case of an Emergency provided that such inspection shall be carried out in a manner that, to the extent reasonably practicable, minimises interference with the operation and management of the Property.

12.4.2 Any inspection undertaken pursuant to this Clause 12.4 shall be limited to assessing:

(a) the structural condition and integrity of the Property;

(b) fire, life safety and security-related matters;

(c) material damage to or deterioration of Handover Assets;

(d) compliance by the Operator with its obligations concerning the Authority Reserved Accommodation and common areas; and

(e) such other matters expressly required to be monitored by the Authority under this Contract or as may reasonably be necessary to verify compliance by the Operator with its obligations under this Contract relating to safety, Applicable Laws or Applicable Permits.

12.4.3 The Authority and the Nodal Officer shall not supervise or interfere with the day-to-day operation, management, staffing, housekeeping, maintenance schedules, operational policies, guest services, pricing or other routine operational matters of the Property and no inspection, observation, direction or requirement under this Clause 12.4 shall be construed as conferring upon the Authority or the Nodal Officer any right or obligation to supervise such matters, except to the extent applicable to the Authority Reserved Accommodation and common areas, and except for such intervention as may be expressly permitted under Clause 7.3 in an Emergency. Where the Authority exercises its rights under Clause 7.3 and itself undertakes, or causes to be undertaken, the remedial measures in question, Damages under this Clause 12.4 shall cease to accrue with effect from the date on which such remedial measures are commenced, without prejudice to the right of the Authority to recover the costs, charges and expenses incurred by it in that behalf, together with the overheads stipulated in Clause 7.3.

12.4.4 The findings of every inspection shall be recorded in writing and communicated to the Operator, specifying the defects, deficiencies, non-compliances identified and the performance or remedial outcome required to be achieved together with the time within which the same are to be attended to. The Operator shall carry out such remedial measures as are its responsibility under this Contract within the time so specified, at its own cost. However, where the matter constitutes a Structural Defect for which the Authority is responsible under this Contract, the Authority shall be responsible for the rectification thereof in accordance with Sub-Clauses 7.1.1(f) and 7.1.2, and the Operator shall provide such reasonable assistance and access as may be required for such rectification.

12.4.5 Where any defect, deterioration, damage arising out of deferred or poor maintenance obligations or negligence or non-compliance of the Operator identified during inspection as are expressly identified pursuant to Clause 12.4 and which fall within the responsibility of the Operator under this Contract and affects the safe and reliable operation of the Property or operation of the Authority Reserved Accommodation as specified in this Contract ((other than a Structural Defect for which the Authority is responsible under this Contract), and the same remains uncured by the Operator upon expiry of the cure period specified, the Authority shall be entitled to levy Damages in terms of this Clause 12.4 read with **Schedule-J**.

12.4.6 The defects, deficiencies and non-compliances enumerated in **Schedule-J** are graded, according to their criticality and the risk occasioned thereby to safety, to the Property, to the Authority Reserved Accommodation and to the interests of the Authority and the rate of Damages specified against each item in Schedule-J are the maximum per day that applies to that item. However, the Authority may determine a lower amount having regard to the **nature, severity, extent, duration, recurrence and potential consequences** of the relevant defect, deficiency or non-compliance. Provided no damages shall be levied in respect of routine operational, commercial or management decisions of the Operator which are not subject to monitoring under Clause 12.4.2, including staffing, housekeeping, maintenance scheduling, operational policies, guest services or pricing, except to the extent expressly relating to the Authority Reserved Accommodation and its common areas, safety, Applicable Laws or Applicable Permits.

12.4.7 Where a single set of facts gives rise to a liability under more than one item of Schedule-J, Damages shall be leviable only in respect of the item attracting the highest rate, and not cumulatively. Where any defect, deficiency or non-compliance is the subject of a specific provision for interest, compensation or recovery elsewhere in this Contract, including Sub-Clause 14.2.6 and Clause 16.8, such specific provision shall prevail and no Damages shall be levied under this Clause 12.4 in respect of the same period, so that there is no double recovery.

12.4.8 The Operator shall, in addition to the reports required elsewhere under this Contract, furnish to the Nodal Officer:

(a) a monthly operations report setting out occupancy, utilisation of the Authority Reserved Accommodation, F&B and banquet utilisation, maintenance activities undertaken, breakdowns and material incidents;

(b) a quarterly statement of Revenue Collections under Sub-Clause 5.6.3;

(c) an annual compliance certificate confirming the validity and subsistence of all Applicable Permits and Insurance Cover, and compliance with Applicable Laws; and

(d) an annual structural safety and fire safety certificate issued by a competent and licensed agency.

12.4.9 No inspection, comment, observation, approval, concurrence or failure to inspect or object on the part of the Authority or the Nodal Officer shall relieve the Operator of any of its obligations or liabilities under this Contract, nor shall the same be construed as an acceptance or approval of the standard of performance of the Operator.

12.4.10 The aggregate of all Damages levied under this Clause 12.4 in any Accounting Year shall not exceed 10% (ten per cent) of the Annual Contract Fee payable for that Accounting Year. Upon the aggregate of such Damages in any Accounting Year reaching the said cap, the Operator shall be deemed to be in persistent breach of its obligations under this Contract, and such

deemed persistent breach shall constitute an Operator Event of Default. For the avoidance of doubt, the said cap shall not apply to, and shall be computed without reference to, any amount recovered by the Authority under Clause 7.3, Clause 10.2, Clause 16.8, Sub-Clause 14.2.6 or Article 22.

12.4.11 No Damages shall be leviable under this Clause 12.4 in respect of any defect, deficiency or non-compliance to the extent that the same: (a) is attributable to a Force Majeure Event; (b) is attributable to a breach by the Authority of its obligations under this Contract, or to any act or omission of the Authority, the Nodal Officer or any Authority Designated Occupant; (c) constitutes a Structural Defect for which the Authority is responsible under Sub-Clauses 7.1.1(f) and 7.1.2; or (d) is attributable to any delay on the part of the Authority in according any approval specifically required to be taken if specified in this Contract, for the cure thereof, in which event the Cure Period shall stand extended in accordance with the definition of Cure Period. Provided further, where the Operator, despite diligent and continuous efforts, is unable to complete the cure within the specified Cure Period for reasons not attributable to the Operator including any Force Majeure Event, or any delay on the part of the Authority in granting an approval, access or information reasonably required for the cure, the Cure Period shall stand extended by the period of such delay, and no Damages shall accrue during the period of such extension.

12.4.12 Where the Authority exercises its rights under Clause 7.3 and itself undertakes, or causes to be undertaken, the remedial measures in question, Damages under this Clause 12.4 shall cease to accrue with effect from the date on which such remedial measures are commenced, without prejudice to the right of the Authority to recover the costs, charges and expenses incurred by it in that behalf, together with the overheads stipulated in Clause 7.3.

12.4.13 The Damages specified in Schedule-J represent a genuine pre-estimate of the loss likely to be suffered by the Authority, agreed between the Parties as reasonable compensation and not as a penalty, within the meaning of Sub-Clause 1.2.1(r), and the Authority shall not be required to prove actual loss or damage in respect thereof. Any Dispute as to the levy or quantum of Damages under this Clause 12.4 shall be resolved in accordance with Article 23, and the Operator shall, pending such resolution, continue to perform its obligations under this Contract.

13. NODAL OFFICER

13.1 Nomination

13.1.1 The Authority shall, prior to the Effective Date, appoint a suitable person possessing the requisite skill-set as the Nodal Officer, who shall act as the representative of the Authority in respect of the Project, and shall notify the name, designation, address, telephone number and e-mail address of the Nodal Officer to the Operator in writing.

13.1.2 The Authority may, at any time and at its sole discretion, remove, replace or substitute the Nodal Officer, and shall notify the Operator of any such change forthwith. No such change shall affect the validity of any act done, or direction issued, by the previous Nodal Officer.

13.1.3 The Operator shall, prior to the Effective Date, nominate a General Manager or other officer of equivalent seniority stationed at the Property to act as its representative for all purposes under this Contract, and shall notify the particulars thereof to the Authority. Any change in such nomination shall be notified to the Authority forthwith.

13.2 Roles and Responsibilities

13.2.1 The Nodal Officer shall, on behalf of the Authority:

(a) act as the single point of contact between the Authority and the Operator in respect of the Project;

(b) co-ordinate the handover of the Property on the Effective Date and the preparation and signing of the Joint Inventory and Condition Report;

(c) monitor and review the progress of the Furnishing Works of Authority Reserved Accommodation and the common areas attached to it and verify the satisfaction of the pre-requirements under Clause 11.2 and the readiness of the Authority Reserved Accommodation under Clause 11.3;

(d) monitor the performance by the Operator of the OMM Services and its compliance to the extent provided for under this Contract primarily relating to the Authority Reserved Accommodation, and carry out inspections under Clause 12.4;

(e) oversee the grievance redressal mechanism relating to the Authority Reserved Accommodation under Clause 12.3;

(f) issue any directions and communications to the Operator on behalf of the Authority;

(g) identify any safety concerns emanating from Operator's non-compliance; and

(h) discharge such other functions as the Authority may from time to time assign to him under this Contract.

13.2.2 The Nodal Officer shall act fairly, impartially and reasonably in the discharge of his functions, and shall not unreasonably withhold or delay any approval, confirmation or determination required of him.

13.2.3 The Nodal Officer shall have no authority to amend, vary, waive or relax any provision of this Contract, to grant any extension of the OMM Period, to reduce or defer the Annual Contract Fee, or to bind the Authority in any manner not expressly authorised by the Authority in writing.

13.2.4 The Operator shall render all necessary co-operation, access, assistance, information and facilities to the Nodal Officer in the discharge of his functions.

13.3 No Waiver

13.3.1 No act, omission, direction, instruction, approval, concurrence, comment, observation, inspection, review, certificate or failure to act on the part of the Nodal Officer shall:

(a) relieve the Operator of any of its duties, obligations, responsibilities or liabilities under this Contract;

(b) constitute or be construed as a waiver by the Authority of any of its rights or remedies under this Contract or in law;

(c) constitute an acceptance or approval by the Authority of the quality, adequacy or sufficiency of the OMM Services or of any work, material, service or asset;

(d) create any liability on the part of the Authority or the Nodal Officer towards the Operator, any User or any third party; or

(e) be pleaded by the Operator in defence of, or in mitigation of, any breach or default on its part.

13.3.2 The Operator shall remain solely responsible for the performance of its obligations under this Contract notwithstanding any involvement, direction or supervision of the Nodal Officer.

14. ANNUAL CONTRACT FEE

14.1 Annual Contract Fee

14.1.1 In consideration of the rights, privileges, interest and opportunity granted by the Authority to the Operator under this Contract to operate and manage the Property and to derive operating revenues therefrom during the OMM Period, the Operator shall pay to the Authority:

(a) **Upfront OMM Contract Amount:** a one-time, non-refundable amount of INR 10,00,00,000 (Indian Rupees Ten Crore only), being the Upfront OMM Contract Amount, payable by the Operator to the Authority in two instalments as follows: (i) the first instalment of INR 5,00,00,000 (Indian Rupees Five Crore only) on or before the Contract Date; and (ii) the balance second and final instalment of INR 5,00,00,000 (Indian Rupees Five Crore only) within 7 (seven) days from the end of 3 (three) months reckoned from the Contract Date (the "**Upfront OMM Contract Amount**"); and

(b) **Annual Contract Fee:** a fee of **INR [●] ([●] only)** per annum, being the fixed amount quoted by the Selected Bidder and accepted by HPIDB, payable annually in the manner set out in Clause 14.2 (the **"Annual Contract Fee"**).

14.1.2 The Annual Contract Fee shall escalate at the rate of **3% (three per cent) per annum**, calculated on the Annual Contract Fee payable for the immediately preceding year. The escalation shall take effect from each anniversary of the Fee Commencement Date and shall apply for the entirety of the OMM Period, including any extension granted under Sub-Clause 4.1.3 unless otherwise stipulated by the Authority in the terms of such extension.

14.1.3 The obligation of the Operator to pay the Annual Contract Fee is absolute and unconditional, and shall not be affected, reduced, deferred, suspended or extinguished by reason of any shortfall in occupancy, revenue or profitability, any competition, any change in market conditions, any dispute between the Parties, or any other cause whatsoever.

14.2 Payment Mechanics

14.2.1 The Annual Contract Fee for each year shall be payable by the Operator in **4 (four) equal quarterly instalments in arrears**, at the end of each payment quarter.

14.2.2 The Operator shall pay the first instalment of the Annual Contract Fee on the earlier of the following (the "**Fee Commencement Date**"):

(a) within 5 (five) days following the completion of 6 (six) months from the Effective Date; **or**

(b) within 5 (five) days following the end of the first quarter calculated from the Operations Date.

14.2.3 Each subsequent instalment shall be paid within 5 (five) days following the end of the relevant payment quarter, and the Operator shall not be entitled to await any invoice, demand or reminder from the Authority.

14.2.4 All payments under this Article 14 shall be made through the Escrow Account, by RTGS/NEFT transfer to the bank account designated by the Authority, and shall be free of any deduction, withholding, set-off or counterclaim, save for any deduction of tax at source required under Applicable Laws.

14.2.5 Where the Annual Contract Fee, or any instalment thereof, relates to a period of less than a full quarter or a full year, the same shall be computed on a *pro rata* basis by reference to the number of days.

14.2.6 In the event of delay in the payment of Annual Contract Fee beyond the Due Date, the Operator shall be required to pay to the Authority, interest at the rate equal to SBI MCLR + 4% (four per cent) per annum for delay upto 30 days. Any delay in payment shall additionally entitle the Authority to recover the same from the Escrow Account/ by appropriation of the Performance Security, or as arrears of land revenue.

14.2.7 Any continued delay beyond 30 days from the Due Date shall constitute an Operator Event of Default.

14.2.8 Delay in the payment of any two consecutive instalments of the Annual Contract Fee, or of any three instalments in any period of 24 (twenty-four) months, shall also constitute an Operator Event of Default.

14.2.9 In the event of any delay by the Operator in payment of the second and final instalment of the Upfront OMM Contract Amount beyond its due date under Sub-Clause 14.1.1(a), the Operator shall pay to the Authority interest at the rate equal to SBI MCLR + 4% (four per cent) per annum on the unpaid amount for the period of delay up to 30 (thirty) days. Any such delay shall additionally entitle the Authority to recover the outstanding amount, together with interest if any accrued thereon, from the Escrow Account, by appropriation of the Performance Security, or as arrears of land revenue.

14.2.10 Any continued delay in payment of the second and final instalment of the Upfront OMM Contract Amount beyond 30 (thirty) days from its due date under Sub-Clause 14.1.1(a) shall constitute an Operator Event of Default.

14.3 Taxes and Levies

14.3.1 The Operator shall bear and pay all direct and indirect Taxes applicable on the Annual Contract Fee and all other pay-outs under this Contract, **whether such Taxes are payable by the Authority or by the Operator**, together with all applicable local levies and service charges.

14.3.2 The provisions of Clauses 5.5.4 to 5.5.8 shall apply to all Taxes in relation to the Project.

15. AUTHORITY RESERVED ACCOMMODATION

15.1 Authority Reserved Accommodation

15.1.1 Out of the total accommodation and facilities available at the Property as set out in Part I of **Schedule-B**, the accommodation and facilities set out in Part II of **Schedule-B** stand reserved exclusively for the use of the Authority, the GoHP and their officers, officials, employees, guests, delegates and such other persons as may be authorised by the Authority from time to time (the **"Authority Reserved Accommodation"**).

15.1.2 The guest rooms, dormitories, PSO rooms, office areas and parking spaces comprised in the Authority Reserved Accommodation shall remain exclusively reserved for the Authority and the GoHP throughout the OMM Period. The reservation and booking of the Authority Reserved Accommodation shall be taken and managed by the Authority itself through its own online portal, with intimation to the Operator, and the Operator shall have no right whatsoever to book, allot, offer or make available the Authority Reserved Accommodation to any person at any time during the OMM Period**.**

15.1.3 Notwithstanding Sub-Clause 15.1.2, the operation, maintenance, housekeeping, upkeep, servicing and management of the Authority Reserved Accommodation shall remain the sole responsibility of the Operator, at its own cost, risk and expense.

15.1.4 The Operator shall ensure, at all times during the OMM Period, the availability to the Authority and the GoHP of the full Authority Reserved Accommodation. The Operator shall be excused from this obligation only to the extent, and for so long as, such availability (including by substitution) is prevented by a Force Majeure Event or by an order or direction of a Government Instrumentality, and shall use its best efforts to restore full availability with the least practicable delay. Provided however, the availability of the 2 (two) VVIP Suites (reserved for the exclusive use of His Excellency the Governor of the State of Himachal Pradesh and the Hon'ble Chief Minister of the State) shall be maintained at 100% all times and any failure to ensure the same on more than 2 (two) occasions in an Accounting Year will be considered a breach of Operator's covenant.

15.1.5 The 2 (two) VVIP Suites, the drivers' dormitory, the PSO rooms and the office areas shall remain free of cost at all times and shall be available exclusively for the Authority.

15.1.6 The Operator shall ensure that the Authority Reserved Accommodation is furnished, equipped, serviced and maintained to a standard and quality equal to that of the Operator Operational Accommodation, as per the Brand Standards, at all times during the OMM Period.

15.1.7 Entry to the Authority Reserved Accommodation and to the accommodation inventory available for public operation by the Operator shall, to the extent reasonably practicable, be through separate designated entrances, and shall be appropriately identified and distinguished through signage. The Operator shall put in place such segregation, at its own cost, prior to the Operations Date, in consultation with, and to the satisfaction of, the Nodal Officer.

15.1.8 The Operator shall provide to the Authority, at its own cost, such interface, access credentials, real-time inventory data and technical support as may be required to enable the online portal of the Authority to operate in conjunction with the Property Management System of the Operator.

15.1.9 The Operator shall not deny, delay, condition or restrict the check-in of any Authority Designated Occupant holding a valid booking intimation issued by the Authority, and shall

extend to every Authority Designated Occupant the same standard of courtesy, service and facility as is extended to other guests.

15.2 Authority Reserved Accommodation Revenue

15.2.1 The per-day charges applicable to the Authority Reserved Accommodation are set out in Part II of **Schedule-B**. The said charges shall be subject to revision from time to time by the Authority at its sole discretion, and shall take effect from the date specified in a written intimation issued by the Authority to the Operator. The Operator shall have no right to object to, or claim any compensation on account of, any such revision.

15.2.2 The room rent realised in respect of the 30 (thirty) chargeable rooms and 2 (two) student dormitories, comprised in the Authority Reserved Accommodation (that is, excluding the 2 VVIP Suites and driver dormitory) shall be collected and retained by the Operator as part of its operating revenues, and shall be deposited into the Escrow Account in accordance with Article 6.

15.2.3 The Operator shall raise bills to the Authority Designated Occupants at the time of check-in in respect of the chargeable rooms and student dormitories in accordance with the charges specified under Sub-Clause 15.2.1, and shall not levy, demand or collect any amount in excess thereof from any Authority Designated Occupant in respect of such rooms, whether by way of service charge, surcharge, convenience fee, seasonal or peak-period tariff, or otherwise.

15.2.4 The Operator shall maintain separate and auditable records of occupancy, billing and collection in respect of the Authority Reserved Accommodation, and shall furnish a quarterly statement thereof to the Nodal Officer.

15.2.5 No amount shall be charged, levied or collected in respect of the VVIP Suites, the drivers' dormitory, the PSO rooms, the office areas or the reserved parking spaces at any time.

15.3 F&B Services to Authority Designated Occupants

15.3.1 The Operator shall provide F&B Services to the Authority Designated Occupants in accordance with the menu and at the rates specified in **Schedule-H**. The said menu and rates shall be subject to revision from time to time by the Authority, and shall take effect from the date specified in a written intimation issued by the Authority to the Operator.

15.3.2 Where an Authority Designated Occupant requires any item of food or beverage outside the menu prescribed in Schedule-H, the same shall be provided by the Operator at the rates applicable to other paying guests at the Property, and shall be payable by the person concerned.

15.3.3 All revenues realised from the provision of F&B Services to the Authority Designated Occupants shall accrue to and be retained by the Operator as part of its operating revenues, and shall be deposited into the Escrow Account.

15.3.4 The quality, quantity, hygiene, presentation, service standard and timeliness of the F&B Services provided to the Authority Designated Occupants shall be similar to and at par with that provided to other guests at the Property, and no distinction of any nature shall be made on account of the rates prescribed under **Schedule-H**.

15.3.5 The Operator shall make available room service and in-house dining facilities to the Authority Designated Occupants at all reasonable hours, and shall provide such special catering

arrangements as the Authority may require in connection with official functions, meetings and delegations, at rates to be mutually agreed in advance.

15.4 Additional Booking Right

15.4.1 Whenever the 30 (thirty) chargeable rooms comprised in the Authority Reserved Accommodation (that is, excluding the 2 VVIP Suites) are fully occupied on any particular day during the OMM Period, then, in respect of that particular day, the Authority shall be entitled to book rooms falling within the Operator's quota at a discount of 20% (twenty per cent) on the lowest published tariff on the official website of the Operator in respect of that particular day (the **"Additional Booking Right"**, and the rooms so booked, the **"Additional Booked Rooms"**).

15.4.2 Provided that the Operator shall not be required to discharge the obligation under Sub-Clause 15.4.1 if the rooms falling within the Operator's quota are already booked or occupied in respect of that particular day.

15.4.3 The Authority shall exercise the Additional Booking Right by intimation to the Operator, and the Operator shall confirm the availability or non-availability of rooms within 2 (two) hours of such intimation. Where the Operator asserts non-availability, it shall furnish to the Nodal Officer, on demand, the occupancy records for that day in support thereof.

15.4.4 Persons occupying Additional Booked Rooms shall be Authority Designated Occupants for the purposes of this Contract, and shall be entitled to the F&B Services referred to in Clause 15.3 and to the standard of service required under this Article 15.

15.4.5 The charges payable in respect of Additional Booked Rooms shall be collected and retained by the Operator as part of its operating revenues and deposited into the Escrow Account.

15.4.6 The Operator shall publish and maintain its tariff on its official website at all times, and shall not adopt any device, practice or arrangement having the object or effect of defeating, circumventing or diluting the Additional Booking Right.

16. INSURANCE

16.1 Insurance Requirement

16.1.1 The Operator shall, at its own cost and expense, purchase, procure and maintain in full force and effect, from the Effective Date and throughout the OMM Period until the Divestment Date, such insurance policies as are required under this Article 16, under Applicable Laws and under Good Industry Practice (collectively, the **"Insurance Cover"**).

16.1.2 All insurance policies comprising the Insurance Cover shall be taken out with a reputable insurance company registered with the Insurance Regulatory and Development Authority of India, and shall be in such form and for such amounts as are adequate to cover the full reinstatement or replacement value of the Property and the Project Assets, and the liabilities insured against.

16.1.3 The Authority shall be named as the **loss payee** in each such policy, and the policies shall provide that the proceeds of insurance shall be paid into the Escrow Account.

16.1.4 The Operator shall punctually pay all premia and shall do all things necessary to keep the Insurance Cover valid, subsisting and enforceable at all times, and shall not do or omit to do anything which would render any policy void, voidable or unenforceable.

16.2 Insurance Cover

16.2.1 The Insurance Cover shall include, but shall not be limited to, coverage in respect of the following:

(a) loss of, damage to, or destruction of, the Property, the FF&E, the OS&E, plant and machinery, utility systems and Project Assets, against fire, explosion, lightning, earthquake, flood, storm, tempest, burglary, theft, riot, strike, malicious damage, vandalism, terrorism and other customary insurable risks;

(b) business interruption and loss of revenue arising from insured events;

(c) fidelity guarantee insurance covering fraud, dishonesty, embezzlement, theft or misappropriation by employees or agents of the Operator;

(d) comprehensive third-party liability insurance, including liability for injury to, or death of, persons who may enter the Property, and for property damage arising out of the operation and maintenance of the Property or otherwise;

(e) workmen's compensation insurance, Employees' State Insurance, medi-claim, personal accident insurance and such other employee-related insurance covers as may be required under Applicable Laws;

(f) the Operator's general liability arising out of the OMM; and

(g) such other insurance covers as are customarily maintained by prudent operators of comparable hospitality facilities, or as may be required under Applicable Laws, and any other insurance that may be necessary to protect the interests of the Authority.

16.2.2 The Operator shall additionally procure and maintain public liability insurance, product liability insurance in respect of the F&B Services, and such insurance as may be required in respect of the operation of lifts, boilers, pressure vessels, kitchens and swimming pool or spa facilities (where provided).

16.2.3 The Operator shall procure that its contractors and sub-contractors maintain adequate insurance in respect of their personnel and operations at the Property.

16.2.4 The adequacy of the Insurance Cover shall be reviewed by the Operator at intervals of not more than 3 (three) years, and the sums insured shall be revised so as to reflect the current reinstatement or replacement value of the Property and the Project Assets and the escalation in the Revenue Collections.

16.3 Notices to the Authority

16.3.1 The Operator shall notify the Authority in writing, forthwith and in any event within 7 (seven) days:

(a) of the occurrence of any event or circumstance which gives rise, or may give rise, to a claim under any policy comprising the Insurance Cover;

(b) of the lodging of any claim, and of the settlement, rejection, repudiation or withdrawal thereof;

(c) of the cancellation, lapse, expiry, suspension, non-renewal or material variation of any such policy, or of any notice received from the insurer in relation thereto; and

(d) of any change in the insurer, the sums insured, the deductibles or the risks covered.

16.3.2 The Operator shall procure that each policy comprising the Insurance Cover contains an undertaking by the insurer to give the Authority not less than 30 (thirty) days' prior written notice before any cancellation, lapse or material variation of the policy.

16.4 Evidence of Insurance Cover

16.4.1 The Operator shall, not later than 15 (fifteen) days prior to the Operations Date and thereafter within 15 (fifteen) days of the renewal of each policy, furnish to the Authority certified copies of all policies comprising the Insurance Cover, together with evidence of payment of the premia.

16.4.2 The Operator shall produce the original policies for inspection by the Authority as and when required, and shall furnish an annual certificate confirming that the Insurance Cover is valid, adequate and subsisting.

16.4.3 The Operator shall furnish to the Authority such further information and documents in relation to the Insurance Cover as the Authority may reasonably require.

16.5 Waiver of Subrogation

16.5.1 All insurance policies comprising the Insurance Cover shall include a waiver of any and all rights of subrogation or recovery of the insurers against the Authority, the GoHP and their respective officers, employees, agents and representatives, in connection with any loss or damage covered by such policies.

16.5.2 The Operator shall procure that its insurers acknowledge such waiver in writing, and shall furnish evidence thereof to the Authority.

16.6 Operator's Waiver

16.6.1 The Operator hereby waives, releases and relinquishes any and all claims, demands, rights of action and causes of action against the Authority, the GoHP and their respective officers, employees, agents and representatives in respect of any loss of or damage to the Property, the

Project Assets, the Operator Created Assets, or any other property of the Operator, arising out of any risk which is, or is required under this Article 16 to be, covered by the Insurance Cover.

16.6.2 The Operator acknowledges that the Authority shall not be liable to make good, or to contribute towards, any loss or damage suffered by the Operator, whether or not the same is in fact covered by insurance, and the Operator shall look solely to its insurers in respect thereof.

16.7 Application of Insurance Proceeds

16.7.1 The proceeds of all insurance claims, except claims in respect of loss of life or personal injury, shall be deposited into and credited to the Escrow Account.

16.7.2 Such proceeds shall be applied, in the first instance, towards the necessary repair, reconstruction, reinstatement, replacement, restoration or improvement of the Property and the Project Assets, and the Operator shall carry out such works with all reasonable despatch, whether or not the proceeds are sufficient for that purpose. Any shortfall shall be made good by the Operator at its own cost.

16.7.3 The balance of such proceeds remaining after the repair, reconstruction, reinstatement, replacement or restoration has been completed to the satisfaction of the Authority shall be applied in accordance with the instructions of the Operator.

16.7.4 Where this Contract is terminated prior to the application of the insurance proceeds, the same shall be applied in accordance with Clause 6.4.

16.8 Remedy for Failure to Insure

16.8.1 If the Operator fails to procure, maintain, renew or replenish the Insurance Cover in accordance with this Article 16, the Authority may, without prejudice to any other right or remedy, procure and maintain such insurance itself and to recover the premia and all costs and expenses incurred by it from the Operator, at 110% (one hundred and ten per cent) of the amount so incurred, in accordance with Clause 7.3.

16.8.2 Where any loss or damage occurs at a time when the Insurance Cover is not in force by reason of any default of the Operator, the Operator shall bear and make good the entirety of such loss or damage at its own cost, and shall indemnify the Authority in respect thereof. Any such failure shall additionally constitute an Operator Event of Default.

17. COLLECTION OF USAGE DUES, BILLING, RECORDS AND REPORTING

17.1 Charging and Collection of Usage Dues

17.1.1 Subject to Clauses 15.2 and 15.3, the Operator shall have the right, during the OMM Period, to determine, demand, charge, levy, collect, retain and appropriate as part of its operating revenues all tariffs, fees, charges, rates and Usage Dues applicable to:

(a) all accommodation inventory comprised in the Operator Operational Accommodation;

(b) the restaurant, F&B outlets and F&B Services (other than F&B Services provided to Authority Designated Occupants under the menu prescribed in **Schedule-H**);

(c) the banquet hall, banquet facilities, multi-purpose halls, conference and event facilities;

(d) the car and two-wheeler parking spaces available for operation by the Operator;

(e) advertising, promotional and branding spaces;

(f) the souvenir shop, retail outlets and kiosks; and

(g) all other facilities, amenities, ancillary services and activities available for operation by the Operator under this Contract.

17.1.2 The Operator shall not levy, charge or collect any Usage Dues in respect of the Authority Reserved Accommodation otherwise than at the charges specified under Sub-Clause 15.2.1 and, in respect of F&B Services to Authority Designated Occupants, at the rates specified in **Schedule-H**.

17.1.3 All Usage Dues shall be collected by the Operator in its own name and at its own risk, and the Authority shall bear no responsibility whatsoever for the collection, recovery, realisation or non-realisation of any Usage Dues, or for any bad debt, default or dishonour.

17.1.4 The Operator shall not demand, charge or collect any amount from any User which is not authorised under this Contract or under Applicable Laws, and shall issue a proper receipt or tax invoice in respect of every amount collected.

17.1.5 All Usage Dues collected shall be deposited into Escrow Account as per Article 6.

17.2 Billing, Records and Reporting

17.2.1 The Operator shall maintain, in respect of the Property and the Project, complete, accurate and contemporaneous records of:

(a) all bookings, reservations, check-ins, check-outs and occupancy, separately in respect of the Authority Reserved Accommodation, the Additional Booked Rooms and the Operator Operational Accommodation;

(b) all Usage Dues billed, collected and outstanding;

(c) all F&B Services provided to Authority Designated Occupants and the charges levied therefor;

(d) all banquet, conference and event bookings and the charges levied therefor;

(e) all Revenue Collections and all deposits into and withdrawals from the Escrow Account;

(f) all Applicable Permits, insurance policies, annual maintenance contracts and Project Agreements;

(g) the fixed asset register, maintenance records, breakdown records and refurbishment records; and

(h) all statutory registers and records required to be maintained under Applicable Laws.

17.2.2 All billing shall be carried out through the Point of Sale and Property Management Systems of the Operator, and no manual or off-system billing shall be permitted save in the event of a system failure, which shall be recorded and reported to the Nodal Officer.

17.2.3 The Operator shall furnish to the Nodal Officer the monthly, quarterly and annual reports, statements and certificates specified in Sub-Clauses 5.6.2, 5.6.3, 12.4 and 15.2.4, and such further information and records relating to the Project as the Authority may reasonably require, within 15 (fifteen) days of demand.

17.2.4 The Authority shall be entitled, at its own cost, to cause the records maintained under this Clause 17.2 to be verified, audited or reconciled in accordance with Sub-Clause 5.6.4, and the Operator shall render all necessary co-operation.

17.2.5 Any material misstatement, falsification, suppression or non-maintenance of records under this Clause 17.2 shall constitute an Operator Event of Default.

17.3 No Waiver of Authority Rights

17.3.1 The right of the Operator to determine, charge, collect, retain and appropriate Usage Dues is a contractual right conferred under this Contract for the limited purpose and duration of the Project, and does not, and shall not be construed to, confer upon the Operator any right, title or interest in or over the Property, the Plots or the Project Assets (other than the Operator Created Assets).

17.3.2 No act, omission, indulgence, forbearance, delay or failure on the part of the Authority in enforcing, or in requiring compliance with, any provision of this Article 17 shall operate as a waiver of any right of the Authority, nor shall it preclude the Authority from subsequently enforcing the same.

17.3.3 The receipt by the Authority of the Annual Contract Fee, or of any other amount, with knowledge of any breach of this Contract by the Operator, shall not constitute a waiver of such breach or of any right or remedy of the Authority in respect thereof.

18. FORCE MAJEURE

18.1 Force Majeure

18.1.1 **"Force Majeure"** or a **"Force Majeure Event"** means the occurrence, after the Contract Date, of any event or circumstance set out in Clauses 18.2, 18.3 or 18.4, which is beyond the reasonable control of the Party affected thereby (the **"Affected Party"**), which such Party could not have prevented or overcome by the exercise of due diligence and reasonable care in accordance with Good Industry Practice, and which has a Material Adverse Effect on the Affected Party.

18.1.2 A Force Majeure Event shall not include any event or circumstance:

(a) which is attributable to the negligence, wilful default, breach or omission of the Affected Party or of any person for whom it is responsible;

(b) which the Affected Party could reasonably have foreseen, prevented, avoided or overcome;

(c) which relates to the unavailability, insufficiency or increased cost of funds, finance, labour, materials, equipment or utilities, or to any change in market, economic or competitive conditions;

(d) which relates to the inability of the Operator to achieve the anticipated occupancy, revenue, profitability or return; or

(e) which constitutes a delay in obtaining any Applicable Permit attributable to the Operator's own act, default or omission.

18.2 Non-Political Event

18.2.1 A **"Non-Political Event"** means any of the following events, in so far as it satisfies the requirements of Sub-Clause 18.1.1:

(a) act of God, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, or fire (except where caused by the negligence of the Operator) in the area of the Property;

(b) strikes, boycotts, labour disruptions or lockouts of a general nature, not being restricted to the employees of the Operator or of its contractors;

(c) any judgment, order or injunction of any court of record which prevents the performance of this Contract, save where the same arises out of the default of the Operator;

(d) epidemic or pandemic related lockdown, curfew and/or associated governmental restrictions on movement, etc. in New Delhi exceeding a consecutive period of 15 (fifteen) days in an Accounting Year; and

(e) discovery of geological conditions, toxic contamination or archaeological remains in the area of the Property that could not reasonably have been expected to be discovered through inspection.

18.3 Indirect Political Event

18.3.1 An **"Indirect Political Event"** means any of the following events, in so far as it satisfies the requirements of Sub-Clause 18.1.1:

(a) 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, or civil commotion;

(b) industry-wide or State-wide strikes, boycotts, exceeding a consecutive period of 7 (seven) days in an Accounting Year affecting supplies or operations of the Property;

(c) any political or civil disturbance, or public agitation, which prevents or materially impairs the operation of the Property.

18.4 Political Event

18.4.1 A **"Political Event"** means any of the following events, in so far as it satisfies the requirements of Sub-Clause 18.1.1:

(a) the compulsory acquisition, expropriation or nationalisation of the Property, or of any material part thereof, or of the rights of the Operator under this Contract, by any Government Instrumentality;

(b) any regulatory action which is not the result of any default or violation by the Operator, and by reason of which the right of the Operator to operate the Property is lost and the same continues for a continuous period of more than 15 (fifteen) days.

18.5 Duty to Report Force Majeure Event

18.5.1 Upon the occurrence of a Force Majeure Event, the Affected Party shall, as soon as reasonably practicable and in any event within 7 (seven) days of becoming aware thereof, notify the other Party in writing, setting out:

(a) the nature and particulars of the Force Majeure Event;

(b) the date of its commencement and its estimated duration;

(c) the obligations affected and the extent of such effect;

(d) the estimated loss or damage caused; and

(e) the measures which the Affected Party has taken, and proposes to take, to mitigate and overcome the effects thereof.

18.5.2 The Affected Party shall provide such further reports at intervals of not more than 15 (fifteen) days for so long as the Force Majeure Event subsists, and shall notify the other Party in writing of the cessation thereof within 7 (seven) days of such cessation.

18.5.3 The Affected Party shall at all times use its best efforts to mitigate, remedy and overcome the effects of the Force Majeure Event, to resume performance of its obligations with the least practicable delay, and to minimise the loss and damage occasioned thereby.

18.5.4 Failure by the Affected Party to comply with this Clause 18.5 shall disentitle it to claim any relief under this Article 18 to the extent that such failure has aggravated the consequences of the Force Majeure Event, or has prejudiced the other Party.

18.6 Effect of Force Majeure Event

18.6.1 Subject to compliance with Clause 18.5, the Affected Party shall, for so long as and to the extent that it is prevented by the Force Majeure Event from performing any of its obligations under this Contract, be excused from the performance of such obligations, and such non-performance shall not constitute an Event of Default or a breach of this Contract.

18.6.2 The Contract Period and the OMM Period shall be extended by a period equal in length to the duration of the Force Majeure Event during which the Operator was prevented from operating the Property.

18.6.3 Where the Furnishing Period is affected by a Force Majeure Event, the Furnishing Period shall be extended by a period equal in length to the duration of such Force Majeure Event.

18.6.4 Relief under this Article 18 shall not excuse the Operator from the payment of any amount which became due and payable prior to the occurrence of the Force Majeure Event, nor from the performance of any obligation which is not prevented by the Force Majeure Event.

18.6.5 The Operator shall continue to maintain the Insurance Cover, to safeguard and secure the Property, and to perform such of its obligations as are not prevented by the Force Majeure Event.

18.7 Allocation of Costs Arising out of Force Majeure

18.7.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Save and except as expressly provided in this Article 18, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arisingout of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

18.7.2 The proceeds of insurance received in respect of any loss or damage caused by a Force Majeure Event shall be applied in accordance with Clause 16.7.

18.8 Termination Notice for Prolonged Force Majeure Event

18.8.1 Where a Force Majeure Event, other than a Political Event of the nature described in Sub-Clause 18.8.2, subsists for a continuous period exceeding 180 (one hundred and eighty) days, either Party may, by not less than 30 (thirty) days' written notice to the other Party, terminate this Contract; provided that no such Termination Notice shall take effect if the Force Majeure Event ceases to subsist before the expiry of the notice period.

18.8.2 If a Political Event occurs, which is not triggered as a result of any default or violation by the Operator, due to which the Operator's or the Authority's right to operate the Property is perpetually lost and the same does not get restored even after a continuous period of more than 180 (one hundred and eighty) days within a continuous period of 365 (three hundred and sixty-five) days and the Contract gets frustrated, either Party may in its discretion terminate this Contract by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 18; and upon issue of such Termination Notice, this Contract shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may, after the expiry of such 15 (fifteen) days' period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

18.8.3 Upon Termination under this Clause 18.8, the consequences set out in Clause 18.9 and in Article 20 shall follow.

18.9 Termination Payment for Force Majeure Event

18.9.1 No Termination Payment shall be payable by the Authority to the Operator upon Termination on account of a Force Majeure Event, save as expressly provided in Sub-Clause 18.9.2.

18.9.2 If Termination is on account of a Political Event under Sub-Clause 18.8.2, the Authority shall, subject to Clause 18.9.4 below, make a Termination Payment to the Operator in an amount equal to the unamortized portion of the Upfront OMM Contract Amount, calculated on a straight-line basis over the base period of 25 (twenty-five) years of the OMM Period (excluding any extension granted under Sub-Clause 4.1.3 or Clause 18.6) corresponding to the unexpired (balance) OMM Period; provided that the second and final instalment of the Upfront OMM Contract Amount which has become due but remains unpaid by the Operator as at the date of Termination, together with any interest having accrued thereon under Sub-Clause 14.2.9, shall be deducted from the Termination Payment.

18.9.3 However, the Operator shall leave all the assets created by it at the Property after the Effective Date on an *"as is where is"* basis, and shall leave the Property fully and peacefully, with all its personnel, agents and service providers, leaving behind all Project Assets including Operator Created Assets existing at the Property on the effective date of Termination and forming part of the Property, free and clear of all Encumbrances whether or not created by the Operator after the Effective Date. Subject to the Authority having made payment of the Termination Payment in terms of Sub-Clause 18.9.2, all of the Operator's right, title and interest in and to the Operator Created Assets during the OMM Period and the Property shall determine and cease, and shall vest in the name of the Authority.

18.9.4 The Termination Payment under Sub-Clause 18.9.2 shall be paid by the Authority within 90 (ninety) days of the Divestment Date, after deduction of all amounts due and payable by the Operator to the Authority together with interest and/ or Damages, as may have accrued or become applicable but remain unpaid, and shall be in full and final settlement of all claims of the Operator arising out of or in connection with such Termination.

18.9.5 The Authority shall not make payment of any compensation, damages, reimbursement or refund of any nature in respect of the Upfront OMM Contract Amount, the Annual Contract Fee, the Furnishing Works, the Operator Created Assets, or any loss of profit, revenue, opportunity or investment, upon Termination for any reason other than as provided in Sub-Clause 18.9.2.

18.10 Dispute Resolution

18.10.1 Any Dispute as to whether an event or circumstance constitutes a Force Majeure Event, as to the duration or effect thereof, as to the entitlement of the Affected Party to relief under this Article 18, or as to the quantum of any Termination Payment under Clause 18.9, shall be resolved in accordance with the Dispute Resolution Procedure set out in Article 23. Provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

18.10.2 Pending the resolution of any such Dispute, the Parties shall continue to perform their respective obligations under this Contract to the extent not prevented by the Force Majeure Event, and the Operator shall not suspend the OMM Services.

19. TERMINATION

19.1 Termination for Operator Event of Default

19.1.1 The occurrence of any of the following events, unless it has occurred as a consequence of a Force Majeure Event or of a breach by the Authority of its obligations under this Contract, shall constitute an event of default on the part of the Operator (an **"Operator Event of Default"**):

(a) failure of the Operator to complete the Furnishing Works within the Furnishing Period as specified under Sub-Clause 11.1.1;

(b) failure of the Operator to commence the Operations on the Operations Date even by the end of 180 (one hundred and eighty) days from the Contract Date unless the delay is due to a Force Majeure event in terms of Article 18, to any act, omission or delay on the part of the Authority, or to any delay in the grant of an Applicable Permit for which the Operator had duly and timely applied and which delay is not attributable to any act, default or omission of the Operator, or abandonment, suspension, discontinuance or interruption of the Operations for a continuous period exceeding 7 (seven) days without the prior written approval of the Authority;

(c) failure of the Operator to pay, even by the end of 30 (thirty) days from the Due Date, **(i)** any instalment of the Annual Contract Fee; **(ii)** the second and final instalment of the Upfront OMM Contract Amount, together with any interest accrued thereon under Sub-Clause 14.2.9; or **(iii)** any other amount due and payable to the Authority under this Contract; or (iv) delay by the Operator in the payment of any two consecutive instalments of the Annual Contract Fee, or of any three instalments of the Annual Contract Fee in any period of 24 (twenty-four) months as described in Sub-Clause 14.2.8;

(d) failure of the Operator to furnish, renew, replace, extend, enhance or replenish the Performance Security in accordance with Article 10;

(e) failure of the Operator to procure, maintain or renew the Insurance Cover in accordance with Article 16;

(f) failure of the Operator to open, establish or maintain the Escrow Account, or the occurrence of an Escrow Default, or the routing of any Revenue Collections otherwise than through the Escrow Account;

(g) breach of Clause 5.7 relating to Change in Ownership, or breach of Clause 5.9 relating to negative covenants, or breach of Article 21 relating to assignment and charges;

(h) any structural alteration, addition, demolition or modification of the Property, or any work affecting the structural integrity or external façade of the Property, undertaken by the Operator without the prior written approval of the Authority;

(i) failure of the Operator to ensure the availability of the Authority Reserved Accommodation in accordance with Clause 15.1, or persistent breach of the Operator's obligations under Article 15;

(j) failure of the Operator to remedy any defect, deficiency, damage, deterioration or non-compliance notified under Clause 7.3 or when maximum Damages threshold is breach in terms of Clause 12.4.10;

(k) any representation or warranty of the Operator being found to be false, untrue, misleading or incorrect in any material respect, or any material misrepresentation, suppression or concealment by the Operator or the Selected Bidder;

(l) the Operator, the Selected Bidder or any member of the consortium (if any) being found to have engaged in any corrupt, fraudulent, coercive, collusive, restrictive or undesirable practice in relation to the Bidding Process or the Project;

(m) the Operator being adjudged insolvent or bankrupt, or a resolution being passed or an order being made for its winding up (otherwise than for amalgamation or reconstruction approved by the Authority), or a receiver, liquidator, resolution professional or administrator being appointed in respect of it or any material part of its assets, or the admission of an application under the Insolvency and Bankruptcy Code, 2016 in respect of it;

(n) the Operator repudiating this Contract, or evidencing an intention not to be bound by it;

(o) any act or omission of the Operator which constitutes a breach of, or entitles the lessor to re-enter upon or determine, the Lease Deeds;

(p) failure of the Operator to comply with any final and binding order, direction, award or decision issued under this Contract; and

(q) any other material breach by the Operator of any of its obligations under this Contract.

Provided however, for an unauthorized activity as specified in Clause 5.1.5, no cure period shall be allowed by the Authority.

19.1.2 The levy or recovery of Damages under this Contract shall not be construed as a waiver of the right of the Authority to treat the underlying breach as an Operator Event of Default.

19.2 Procedure to Issue Termination Notice

19.2.1 Upon the occurrence of an Operator Event of Default, the Authority shall be entitled to issue to the Operator a notice in writing (a **"Default Notice"**) specifying in reasonable detail the Operator Event of Default and calling upon the Operator to cure the same within the Cure Period specified therein, which shall not be less than:

(a) 7 (seven) days, in the case of a default in payment of any amount due to the Authority; and

(b) 30 (thirty) days, in any other case.

19.2.2 Where the Operator Event of Default is not, by its nature, capable of being cured, or where the Operator Event of Default falls within Sub-Clause 19.1.1(l), (m) or (n), the Authority may issue a Termination Notice without issuing a Default Notice or granting any Cure Period.

19.2.3 If the Operator cures the Operator Event of Default within the Cure Period to the satisfaction of the Authority, the Default Notice shall stand withdrawn, without prejudice to the right of the Authority to levy and recover Damages in respect of the period of subsistence of the default.

19.2.4 If the Operator fails to cure the Operator Event of Default within the Cure Period, the Authority shall be entitled, at its sole discretion and without prejudice to any other right or remedy available to it, to terminate this Contract by issuing a Termination Notice to the Operator

specifying the Termination Date, which shall not be earlier than 30 (thirty) days from the date of the Termination Notice.

19.2.5 Upon Termination for an Operator Event of Default:

(a) the Authority shall be entitled to encash and appropriate the entirety of the Performance Security;

(b) **no Termination Payment or compensation of any nature shall be payable by the Authority to the Operator**, and the Upfront OMM Contract Amount paid by the Operator shall stand forfeited; any instalment of the Upfront OMM Contract Amount which has become due but remains unpaid shall continue to be due and recoverable from the Operator in accordance with Sub-Clause 19.2.5(c);

(c) the Operator shall pay to the Authority all amounts due and payable under this Contract, together with interest and/ or Damages, if any accrued or become payable but remain unpaid; and

(d) the Operator shall comply with the Divestment Requirements set out in Article 20.

Provided that the forfeiture of the Upfront OMM Contract Amount under sub-clause (b) above, and the appropriation of the Performance Security under sub-clause (a) above, are agreed between the Parties as a genuine pre-estimate of the loss likely to be suffered by the Authority on account of the Operator Event of Default and the consequent premature Termination, and not as a penalty.

19.2.6 The Operator shall, upon receipt of a Default Notice or a Termination Notice, continue to perform its obligations under this Contract until the Divestment Date.

19.3 Rights and Obligations of the Authority

19.3.1 Upon Termination for any cause, the Authority shall be entitled, at its sole discretion and without any liability to the Operator:

(a) to enter upon and take over possession, control and management of the Property and the Project Assets (excluding the moveable assets forming part of Operator Created Assets which the Operator can remove subject to the terms of this Contract), whether by itself or through any agency appointed by it;

(b) to operate, manage and maintain the Property, or to engage any other person to do so, on such terms as it may determine;

(c) to take over, at its option, any Project Agreement, Applicable Permit, utility connection, annual maintenance contract, warranty or guarantee subsisting in relation to the Property, and the Operator shall execute all such deeds and documents as may be necessary to give effect thereto;

(d) to appropriate the Performance Security and to withdraw amounts from the Escrow Account in accordance with Clause 6.4; and

(e) to recover all amounts due from and payable by the Operator under ,this Contract if not paid by the Operator upon demand as arrears of land revenue.

19.3.2 The Authority shall not be liable to the Operator, to any User, to any employee or contractor of the Operator, or to any third party, in respect of any act done or omitted to be done in the exercise of its rights under this Clause 19.3.

19.3.3 The Authority shall not, by reason of taking over the Property under this Clause 19.3, assume, incur or become liable for any obligation, debt, liability or claim of the Operator, whether towards its employees, contractors, vendors, financiers, guests or otherwise, and the Operator shall indemnify the Authority in respect thereof.

19.4 Survival of Rights

19.4.1 Termination of this Contract shall be without prejudice to, and shall not affect, any right, remedy, obligation or liability of either Party which has accrued prior to the Termination Date, or which arises out of any act, omission, breach or default occurring prior thereto.

19.4.2 The provisions of Article 1, Clause 5.4.5, Clause 5.4.6, Clause 5.8.5, Article 6 (to the extent of Clauses 6.4 and 6.5), Article 9, Clause 10.3, Article 19, Article 20, Article 22, Article 23 and Article 24, and every other provision which by its nature or by express stipulation is intended to survive Termination, shall survive the Termination of this Contract and shall continue in full force and effect.

19.4.3 The obligations of the Operator in respect of confidentiality, indemnity, records, statutory dues and the Divestment Requirements shall survive Termination until fully discharged.

19.5 Liability for Defects after Termination

19.5.1 The Operator shall remain liable, for a period of 6 **(six) months** from the Divestment Date, in respect of any defect, deficiency, damage or deterioration in the Property or the Project Assets (reverting to the Authority on Divestment Date in terms of this Contract) which is attributable to any breach, default, negligence, poor workmanship, defective material or inadequate maintenance on the part of the Operator during the OMM Period, whether or not such defect was apparent or discoverable on the Divestment Date.

19.5.2 Upon notice from the Authority, the Operator shall rectify and make good any such defect, deficiency, damage or deterioration at its own cost within 30 (thirty) days, failing which the Authority may cause the same to be rectified and recover the cost thereof from the Operator at 110% (one hundred and ten per cent) of the amount so incurred, in accordance with Clause 7.3.

19.5.3 The Authority shall be entitled to withhold from the release of the Performance Security, or from any Termination Payment, such amount as it may reasonably estimate to be necessary to meet the liability of the Operator under this Clause 19.5.

19.5.4 The liability of the Operator under this Clause 19.5 shall be without prejudice to any other right or remedy available to the Authority under this Contract or in law, including any right arising under the law of tort or under any statutory warranty.

20. CONSEQUENCES OF TERMINATION

20.1 Divestment Requirements

20.1.1 Upon expiry of the OMM Period by efflux of time, or upon earlier Termination for any cause, the Operator shall, within **30 (thirty) days** thereof and at its own cost, comply with the following requirements (the **"Divestment Requirements"**):

(a) **peacefully and without demur leave and vacate the Property** and every part thereof in good condition (normal wear and tear excepted);

(b) handback the Project Assets in good working and operating condition, normal wear and tear excepted, together with **any and all alterations, additions, modifications, expansions, improvements and betterments made or installed by the Operator thereto (including pursuant to the Furnishing Works) which are attached to the floors, walls or ceilings, including any heating, ventilating and air-conditioning equipment**, free from all Encumbrances;

(c) deliver to the Authority the **originals of all Applicable Permits** and of all other documents relating to the Property, together with all as-built drawings, operation and maintenance manuals, warranties, guarantees, annual maintenance contracts, asset registers, maintenance records, guest data (subject to Applicable Laws relating to data protection) and keys;

(d) execute such instruments, deeds, documents and writings as the Authority may require to give effect to the Divestment, and to transfer or assign to the Authority or its nominee such Applicable Permits, utility connections, Project Agreements, warranties and guarantees as the Authority may elect to take over under Sub-Clause 19.3.1(c);

(e) pay all amounts due and payable to the Authority under this Contract, and discharge all statutory dues, Taxes, wages, salaries, gratuity and other liabilities in respect of its personnel, contractors and vendors;

(f) procure the vacation of all areas occupied by any vendor, shop operator, kiosk operator or other third party, and deliver such areas free of any claim of occupancy; and

(g) remove all its Brand names, marks, signage and branding material in accordance with Sub-Clause 5.8.6.

20.1.2 **Removal of Operator Created Assets.** Subject to Sub-Clause 20.1.3, the Operator shall be entitled to remove any movable assets procured, created, brought to and installed at the Property by the Operator at its own cost after the Effective Date that form part of the Operator Created Assets, to the extent that such removal would not cause any damage to the Property or any part thereof. Any damage caused by such removal shall be made good by the Operator at its own cost.

20.1.3 The entitlement under Sub-Clause 20.1.2 shall **not** extend to:

(a) Handover Assets forming part of the Joint Inventory and Condition Report, or any replacement thereof;

(b) any alteration, addition, modification, improvement or betterment attached to the floors, walls or ceilings, including HVAC equipment, referred to in Sub-Clause 20.1.1(b); and

(c) all assets, in the case of Termination on account of a Political Event under Sub-Clause 18.8.2, to which Sub-Clause 20.1.5 applies.

20.1.4 In the event that the Operator fails to remove the Operator Created Assets referred to in Sub-Clause 20.1.2 within 30 (thirty) days of the expiry or earlier Termination of this Contract, such Operator Created Assets shall vest exclusively in the Authority, free and clear of any claim of the Operator or of any person claiming by, through or under the Operator, and the Authority shall be at liberty to deal with the same as it thinks fit, without any liability to account to the Operator.

20.1.5 In the case of Termination on account of a Political Event under Sub-Clause 18.8.2 and payment of the Termination Payment under Sub-Clause 18.9.2, the Operator shall leave all the Project Assets including the Operator Created Assets (whether removable/ moveable or immoveable) created/ installed/ incorporated/ brought by it at the Property after the Effective Date on an 'as-is-where-is' basis, free of all Encumbrances, and shall not remove any asset therefrom, and all such assets shall vest absolutely in the Authority.

20.1.6 The Operator shall not be entitled to claim any lien, charge, set-off or right of retention over the Property, the Project Assets or any part thereof on account of any amount claimed by it to be due from the Authority.

20.2 Inspection and Cure

20.2.1 Not later than **90 (ninety) days** prior to the scheduled expiry of the OMM Period, or forthwith upon the issue of a Termination Notice, the Authority and the Operator shall jointly inspect the Property and the Project Assets (excluding the moveable assets forming part of Operator Created Assets in case of Termination due to any reason other than a Political Event), and shall prepare a report recording the condition thereof as compared with the Joint Inventory and Condition Report (the **"Divestment Inspection Report"**).

20.2.2 The Divestment Inspection Report shall specify the defects, deficiencies, damage, deterioration, shortfalls, missing items, deferred maintenance and non-compliances requiring rectification, replacement or making good, and the time within which the same are to be attended to.

20.2.3 The Operator shall, at its own cost and prior to the Divestment Date, rectify, repair, replace, refurbish and make good all such defects, deficiencies, damage, deterioration, shortfalls and non-compliances to the satisfaction of the Authority.

20.2.4 Where the Operator fails to do so, the Authority shall be entitled to cause the same to be rectified, repaired, replaced or made good by itself or through any agency, and to recover the cost thereof from the Operator at **110% (one hundred and ten per cent)** of the amount so incurred, in accordance with Clause 7.3, and to appropriate the Performance Security and the balances in the Escrow Account towards such recovery.

20.2.5 The Authority shall be entitled to conduct such further inspections, tests, audits and structural assessments prior to the Divestment Date as it may consider necessary, and the Operator shall render all necessary co-operation.

20.3 Costs, Charges and Expenses

20.3.1 All costs, charges, expenses, Taxes, stamp duty, registration fees and other levies arising out of or in connection with the Divestment, the handing back of the Property, the removal of the Operator Created Assets (to the extent permitted under this Contract), the making good of damage, the transfer or assignment of Applicable Permits, utility connections, Project

Agreements, warranties and guarantees, and the execution and registration of the instruments referred to in Sub-Clause 20.1.1(e), shall be borne solely by the Operator.

20.3.2 The Operator shall bear all costs of the retrenchment, termination, settlement and statutory dues of its personnel upon Termination, and shall keep the Authority fully indemnified in respect thereof. No personnel of the Operator shall have any claim of employment, absorption, regularisation or continuity of service against the Authority or the GoHP.

20.3.3 The Operator shall bear all costs of the Divestment Inspection Report, of any test, audit or assessment carried out under Clause 20.2, and of the rectification works required thereunder.

20.3.4 All amounts payable by the Operator under this Clause 20.3 shall, if not paid within 15 (fifteen) days of demand, be recoverable from the Escrow Account, from the Performance Security, by deduction from any Termination Payment, or as arrears of land revenue.

20.4 Divestment of Assets and Handback

20.4.1 With effect from the Divestment Date, all right, title and interest of the Operator in and to the Operator Created Assets (save as permitted to be removed under Sub-Clause 20.1.2) shall stand transferred to and vest in the Authority, and the Operator shall hand back the Property and the Project Assets (in and to which the Operator holds no right, title or interest) to the Authority, and shall thereafter peacefully leave the Property.

20.4.2 The Operator shall execute a deed of divestment, in such form as the Authority may prescribe, confirming that it holds and claims no right, title or interest in the Property or the Project Assets other than those permitted to be removed under this Contract, confirming the handover of such Assets.

20.4.3 All Operator Created Assets vesting in the Authority under Sub-Clause 20.1.4, Sub-Clause 20.1.5 or this Clause 20.4 shall vest free of all Encumbrances, claims, liens, hypothecations and third-party rights, and without any payment, compensation, consideration or reimbursement whatsoever by the Authority, save only for the Termination Payment expressly provided under Sub-Clause 18.9.2.

20.4.4 The Operator shall provide reasonable transition assistance to the Authority or to any successor operator during the period of 30 (thirty) days preceding, and 30 (thirty) days following, the Divestment Date, including the handover of operating systems, data, records, supplier and guest relationships, forward bookings and deposits, so as to ensure continuity of operations at the Property without disruption.

20.4.5 All forward bookings, advance deposits and unutilised guest credits subsisting as at the Divestment Date shall be honoured or refunded by the Operator, and the details thereof shall be furnished to the Authority not less than 30 (thirty) days prior to the Divestment Date.

20.5 Vesting Certificate

20.5.1 Upon the Operator having complied in full with the Divestment Requirements and with Clauses 20.2, 20.3 and 20.4, and having paid all amounts due and payable to the Authority, the Authority shall issue to the Operator a certificate in writing (the **"Vesting Certificate"**) recording:

(a) the compliance by the Operator with the Divestment Requirements;

(b) the date on which the Property and the Project Assets (including Operator Created Assets, if applicable) vested in, and possession thereof was resumed by, the Authority; and

(c) the discharge of the Operator from its obligations under this Contract, save in respect of the obligations which survive Termination under Clause 19.4 and the liability for defects under Clause 19.5.

20.5.2 The Vesting Certificate shall be issued within 30 (thirty) days of the Operator's compliance as aforesaid. The Authority shall not unreasonably withhold or delay the issue of the Vesting Certificate; and where the Authority declines to issue the same, it shall specify in writing the requirements which remain outstanding.

20.5.3 The Divestment Date shall be the date recorded in the Vesting Certificate under Sub-Clause 20.5.1(b).

20.5.4 The issue of the Vesting Certificate shall not relieve the Operator of its liability under Clause 19.5 in respect of defects, or of any obligation or liability which survives Termination.

21. ASSIGNMENT AND CHARGES

21.1 Restrictions on Assignment and Charges

21.1.1 The Operator shall not assign in favour of any person this Contract or the rights, benefits and obligations hereunder, whether in part or full except as expressly permitted under this Contract or with the prior written approval of the Authority.

21.1.2 The Operator shall not assign in favour of any person any right or benefit that has not been provided to the Operator by the Authority. The Operator shall neither sell, transfer, create, nor permit creation or subsistence of any Encumbrance in the Property, underlying land, Plots and Project Assets. Provided, however, that nothing contained herein shall restrict the Operator from engaging contractors, service providers or sub-contractors for the performance of its obligations under this Contract, provided that the Operator shall remain fully responsible and liable for the acts, omissions and performance of such contractors, service providers and sub-contractors. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Contract.

21.1.3 The Authority may, at any time, assign or transfer its rights and obligations under this Contract to the GoHP, to any department of the GoHP, or to any Government Instrumentality, agency, board, corporation or authority owned or controlled by the GoHP, and the Operator shall not object thereto; provided that any such assignee shall assume the obligations of the Authority under this Contract.

21.1.4 This Clause 21.1 shall not be construed as restricting the right of the Authority to deal with, transfer, mortgage or otherwise encumber its own interest in the Property, subject always to the rights granted to the Operator under this Contract.

22. LIABILITY AND INDEMNITY

22.1 General Indemnity

22.1.1 The Operator shall indemnify, defend, save and hold harmless the Authority, the GoHP, HPIDB and their respective officers, employees, agents and representatives (each, an **"Indemnified Person"**) against any and all proceedings, actions, suits, claims, demands, losses, damages, liabilities, costs, charges and expenses (including legal costs on a full indemnity basis) suffered or incurred by, or made or brought against, any Indemnified Person, arising out of or in connection with:

(a) any breach, default, non-performance or inadequate performance by the Operator of any of its obligations, covenants, representations or warranties under this Contract;

(b) any act, omission, negligence, wilful misconduct or fraud of the Operator, its personnel, contractors, sub-contractors, agents or representatives;

(c) any failure of the Operator to comply with Applicable Laws, Applicable Permits or the Lease Deeds;

(d) any claim by any employee, workman, contractor, sub-contractor, vendor, financier or other third party of the Operator, including any claim relating to employment, wages, statutory dues, absorption, regularisation or continuity of service;

(e) any claim by any User, guest, visitor or third party in respect of death, personal injury, illness, loss of or damage to property, food poisoning, deficiency in service or otherwise arising out of the Operations or the Property;

(f) any Tax, cess, duty, levy, penalty or interest payable in respect of the Project or the OMM Services;

(g) any damage to, deterioration of, or loss of, the Property or the Project Assets caused by the Operator's act, default or failure to maintain; and

(h) any infringement of any intellectual property right, whether in relation to the Brand, the hospitality technology systems, or otherwise.

Notwithstanding anything to the contrary in this Article 22, the Operator's indemnities shall not extend to a Structural Defect, or to any loss, damage, claim, cost or liability to the extent arising from a Structural Defect, save to the extent caused or aggravated by the Operator's act, omission, default or failure to maintain the Property in accordance with this Contract.

22.1.2 The indemnity under this Clause 22.1 shall be a continuing indemnity, shall be in addition to and not in substitution for any other right or remedy of the Authority, and shall survive the Termination of this Contract.

22.1.3 **Notice and contest of claims.** Where an Indemnified Person receives a claim from a third party in respect of which it is entitled to the benefit of the indemnity under this Article 22, it shall notify the Operator within 30 (thirty) days of receipt of the claim, and shall not settle or pay the claim without the prior approval of the Operator, which approval shall not be unreasonably withheld or delayed. Where the Operator wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Person and shall bear all costs of contesting the same. The Indemnified Person shall provide all reasonable co-operation and assistance and shall sign all such writings and documents as the Operator may reasonably require. Failure to give

notice within the said period shall not relieve the Operator of its obligations under this Article 22 save to the extent that the Operator has been materially prejudiced thereby.

22.2 Liability of the Authority

22.2.1 The Authority shall indemnify the Operator against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of the failure of the Authority to fulfil any of its obligations under this Contract which materially and adversely affects the performance by the Operator of its obligations hereunder, other than any loss, damage, cost or expense arising out of acts done in the discharge of their lawful functions by the Authority, the GoHP, HPIDB or their respective officers, servants and agents.

22.2.2 The aggregate liability of the Authority under or in connection with this Contract, howsoever arising, whether in contract, tort, statute or otherwise, shall not in any event exceed the amount of the Annual Contract Fee payable for the year in which the liability arises.

22.2.3 The Authority shall not be liable to the Operator, to any User or to any third party for:

(a) any loss of profit, revenue, occupancy, goodwill, opportunity or business, or any indirect, consequential, special, punitive or exemplary loss or damage;

(b) any act, omission, direction or requirement of any police, security or other Government Instrumentality, including any takeover of security arrangements under Sub-Clause 5.3.4;

(c) any interruption, suspension or restriction of the Operations by reason of protocol, security requirements or VVIP movement;

(d) the condition, adequacy or suitability of the Property or the Project Assets;

(e) any failure, interruption or inadequacy of any utility service; or

(f) any act or omission of the Government Instrumentality.

22.2.4 Nothing in this Clause 22.2 shall limit the liability of the Authority in respect of any Termination Payment expressly payable under Sub-Clause 18.9.2.

22.3 Indemnity by the Operator

22.3.1 Without prejudice to the generality of Clause 22.1, the Operator shall indemnify and keep indemnified the Authority and the GoHP in respect of:

(a) all claims of Authority Designated Occupants arising out of any deficiency, discourtesy, denial of service, or breach of Article 15;

(b) all claims arising out of any fire, accident, food safety incident, security lapse or Emergency at the Property attributable to the Operator's act, default or failure;

(c) all penalties, fines, prosecutions and proceedings arising out of the non-compliance by the Operator with any Applicable Law or Applicable Permit; and

(d) all costs incurred by the Authority in defending any proceeding referred to in this Clause 22.3.

22.3.2 The Operator shall, at the request of the Authority, take over the conduct of the defence of any such proceeding at its own cost, and shall keep the Authority informed of the progress thereof.

22.3.3 The indemnities under this Article 22 are not, and shall not be construed as being, limited or capped by the amount of the Performance Security, by the Insurance Cover, or by any limitation of liability elsewhere contained in this Contract.

22.4 No Consequential Claims

22.4.1 Notwithstanding anything to the contrary contained in this Contract, and save in respect of the indemnities under Clauses 22.1 and 22.3 in relation to third-party claims, neither Party shall be liable to the other for any indirect, consequential, special, punitive or exemplary loss or damage, or for any loss of profit, revenue, production, business, goodwill, contract or opportunity, howsoever arising, whether in contract, tort, under statute or otherwise.

22.4.2 The Damages expressly stipulated under this Contract shall be the sole and exclusive remedy in respect of the breaches to which they relate, save that the levy of such Damages shall not preclude the Authority from exercising its rights of step-in under Clause 7.3, of appropriation under Clause 10.2, or of Termination under Article 19.

22.4.3 The limitations in this Clause 22.4 shall not apply in the case of fraud, wilful misconduct, corrupt or fraudulent practice, or a breach of Clause 5.9 or Article 21 by the Operator.

22.5 Survival on Termination

22.5.1 The provisions of this Article 22 shall survive the Termination of this Contract, and shall continue in full force and effect notwithstanding the issue of the Vesting Certificate and the release of the Performance Security.

22.5.2 The indemnities under this Article 22 shall subsist in respect of any claim made, or proceeding instituted, within the period of limitation prescribed under Applicable Laws in respect of the cause of action concerned.

23. DISPUTE RESOLUTION

23.1 Dispute Resolution

23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Contract between the Parties, including as to the existence, validity, interpretation, implementation, breach or termination hereof, or as to the rights, obligations or liabilities of the Parties hereunder (a **"Dispute"**), shall in the first instance be attempted to be resolved amicably in accordance with the procedure set out in this Article 23.

23.1.2 Either Party may, by written notice to the other Party setting out the particulars of the Dispute, require the Dispute to be resolved amicably by mutual discussion and negotiation between the Parties. The Parties shall meet, whether in person or virtually, within 15 (fifteen) days of such notice, and shall use their best efforts to resolve the Dispute amicably within a period of 30 (thirty) days from the date of the said notice.

23.1.3 Where a Dispute is not resolved under Sub-Clause 23.1.2 within the period stipulated therein, either Party may, by written notice to the other Party, refer the Dispute for amicable settlement to the Chief Secretary to the Government of Himachal Pradesh and to the Chairman of the Board of Directors (or the equivalent officer, in the case of a limited liability partnership) of the Operator, who shall endeavour to settle the Dispute amicably within a period of 60 (sixty) days from the date of such reference.

23.1.4 Where a Dispute is not settled under Sub-Clause 23.1.3 within the period stipulated therein, or where either Party declines to participate in, or withdraws from, the process under Sub-Clause 23.1.2 or Sub-Clause 23.1.3, either Party shall be at liberty to refer the Dispute to the appropriate court of law in Shimla, Himachal Pradesh for adjudication, in accordance with Clause 24.1.

23.1.5 Any settlement arrived at under Sub-Clause 23.1.2 or Sub-Clause 23.1.3 shall be recorded in writing, signed by the authorised representatives of both Parties, and shall be final and binding upon the Parties.

23.1.6 Nothing in this Article 23 shall preclude either Party from seeking, at any time, urgent interim or interlocutory relief from a court of competent jurisdiction in the State of Himachal Pradesh, including relief by way of injunction, appointment of a receiver, or preservation of property.

23.1.7 The Parties shall continue to perform their respective obligations under this Contract notwithstanding the existence of any Dispute or the pendency of any proceeding under this Article 23, and the Operator shall not suspend, curtail or discontinue the OMM Services, and shall continue to pay the Annual Contract Fee and all other amounts due to the Authority, pending the resolution of the Dispute.

23.1.8 Nothing in this Article 23 shall restrict, limit or affect the right of the Authority to exercise its rights of step-in under Clause 7.3, of appropriation of the Performance Security under Clause 10.2, of withdrawal from the Escrow Account under Article 6, or of Termination under Article 19.

24. MISCELLANEOUS

24.1 Governing Law and Jurisdiction

24.1.1 This Contract shall be governed by, construed and interpreted in accordance with the laws of India.

24.1.2 The courts at Shimla, Himachal Pradesh shall have exclusive jurisdiction over all matters arising out of or in relation to this Contract, and the Parties hereby submit to the exclusive jurisdiction of such courts and waive any objection on the ground of *'forum non conveniens'* or otherwise.

24.1.3 The Operator shall not institute or maintain any proceeding in relation to this Contract before any court or forum other than as provided in Sub-Clause 24.1.2.

24.2 Waiver of Immunity

24.2.1 Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Contract constitute professional acts done and performed for business purpose;

(b) agrees that, should any proceeding be brought against it or its assets, property or revenues in any jurisdiction in relation to this Contract or any transaction contemplated hereby, no immunity (whether by reason of sovereignty or otherwise) from such proceeding shall be claimed by or on behalf of it in respect of its assets;

(c) waives any right of immunity which it or its assets, property or revenues now have, may acquire in the future, or which may be attributed to it under any jurisdiction; and

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

24.3 Delayed Payments

24.3.1 Any amount due and payable by either Party to the other under this Contract and remaining unpaid on its due date shall carry interest at the rate of 4% (four per cent) per annum above the one-year Marginal Cost of Funds based Lending Rate (MCLR) of the State Bank of India prevailing on the due date, computed on a simple interest basis for the period from the due date until the date of actual payment.

24.3.2 Interest under Sub-Clause 24.3.1 shall accrue from day to day and shall be payable without the necessity of any demand.

24.3.3 The payment or acceptance of interest under this Clause 24.3 shall not authorise or excuse any delay in payment, nor shall it prejudice any other right or remedy of the Party entitled to the payment, including the right to treat the delay as an Event of Default.

24.3.4 The Authority shall be entitled to recover any amount due to it, together with interest thereon, by withdrawal from the Escrow Account, by appropriation of the Performance Security, by deduction from any amount payable by it to the Operator, or as arrears of land revenue.

24.4 Waiver

24.4.1 Waiver by any Party of a default by the other Party in the observance or performance of any provision of, or obligation under, this Contract:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof, or of any other provision of or obligation under this Contract;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party granting the waiver; and

(c) shall not affect the validity or enforceability of this Contract in any manner.

24.4.2 Neither the failure by any Party on any occasion to insist upon the performance of the terms, conditions and provisions of this Contract or of any obligation hereunder, nor any time or other indulgence granted by one Party to the other, shall be considered or deemed to be a waiver of any breach, an acceptance of any variation, or the relinquishment of any right hereunder.

24.5 Liability for Inspection of Documents

24.5.1 The Operator acknowledges that it has, prior to the execution of this Contract, inspected and satisfied itself as to the Bidding Documents, the Lease Deeds, the as-built drawings, the Applicable Permits held by the Authority, and all other documents, records and information made available to it, and that it enters into this Contract on the basis of its own inspection, examination and judgment.

24.5.2 The Authority shall not be liable for any error, omission, inaccuracy, insufficiency or misdescription in any document, drawing, record or information made available to the Operator, and the provisions of Article 9 shall apply thereto.

24.5.3 The Operator shall not be entitled to any claim, relief, extension of time or compensation on the ground that it did not inspect, or was unable to inspect, any document, or that any document was not made available to it.

24.6 Exclusion of Implied Warranties etc.

24.6.1 This Contract expressly excludes any warranty, condition, term or obligation which might otherwise be implied or incorporated into it by statute, common law, custom, usage, trade practice, course of dealing or otherwise, including any implied warranty as to the condition, quality, adequacy, suitability, sufficiency, merchantability or fitness for purpose, of the Property or the Project Assets.

24.6.2 To the extent permitted by Applicable Laws, all such implied warranties, conditions, terms and obligations are hereby expressly negatived and excluded.

24.7 Survival

24.7.1 Termination of this Contract:

(a) shall not relieve the Parties of any obligation hereunder which expressly or by implication survives Termination; and

(b) except as otherwise expressly provided in any provision of this Contract limiting the liability of a Party, shall not relieve either Party of any obligation or liability 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.

24.7.2 The provisions specified in Clause 19.4 shall survive Termination in accordance with the terms thereof.

24.8 Entire Agreement

24.8.1 This Contract, together with the Schedules hereto and the documents referred to in Clause 1.4, constitutes the entire agreement between the Parties in relation to the subject matter hereof, and supersedes all prior negotiations, understandings, representations, communications, correspondence, memoranda and agreements, whether oral or written, between the Parties in relation thereto.

24.8.2 No Party has relied upon, and no Party shall have any right or remedy in respect of, any statement, representation, warranty, assurance or understanding not expressly set out in this Contract, save in the case of fraud.

24.8.3 The Operator confirms that it has not been induced to enter into this Contract by any representation, assurance, promise or undertaking not expressly contained herein.

24.9 Severability

24.9.1 If, for any reason whatsoever, any provision of this Contract 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 and enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, illegal or unenforceable provision, as nearly as is practicable to the provision so affected.

24.9.2 Failure to agree upon any such substituted provision shall not, of itself, constitute a Dispute for the purposes of Article 23, and shall not affect the continued operation of the remaining provisions of this Contract.

24.10 No Lease or License

24.10.1 The Parties expressly agree, acknowledge and declare that this Contract does not, and shall not be construed to, create, constitute or evidence a lease, sub-lease, tenancy, sub-tenancy, demise, licence coupled with any estate, right, title or interest of any nature whatsoever in or over the Property, the Plots or any part thereof in favour of the Operator.

24.10.2 The relationship between the Parties is that of the owner of the Property on the one hand and a service provider engaged for the operation, maintenance and management thereof on the other, and the Operator's presence at the Property is referable solely to, and coterminous with, the performance of the OMM Services.

24.10.3 Legal possession, ownership and control of the Property shall at all times remain vested with the Authority and the GoHP, and the occupation of the Property by the Operator shall be, and shall be deemed to be, occupation for and on behalf of, and permissive under, the Authority.

24.10.4 The Operator shall not, at any time, claim the benefit of, or seek protection under, any legislation relating to tenancy, rent control, protection of possession or the like, and hereby waives any such claim or protection.

24.10.5 Nothing in this Contract shall be construed as a transfer, assignment or sub-demise of any right, title or interest of the GoHP under the Lease Deeds.

24.11 No Partnership

24.11.1 Nothing in this Contract shall be construed as constituting or creating a partnership, joint venture, association of persons, body of individuals, agency, employment, trust or fiduciary relationship between the Parties, and neither Party shall have the authority to bind, or to represent that it has the authority to bind, the other Party.

24.11.2 The Operator shall at all times act as an independent contractor and service provider, and shall not hold itself out, or permit itself to be held out, as an agent, servant, partner, joint venturer or representative of the Authority or of the GoHP.

24.12 Successors and Assigns

24.12.1 This Contract shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns, and shall not be affected by any change in the constitution, name or legal form of either Party.

24.12.2 The rights and obligations of the Operator hereunder are personal to it, and shall not be assignable save in accordance with Article 21.

24.13 Notices

24.13.1 All notices, approvals, consents, communications, demands or other documents to be given or made under this Contract shall be in writing and in English, and shall be delivered personally, or sent by courier, or by registered post or speed post with acknowledgement due, with an additional copy to be sent by e-mail, to the address of the recipient set out below or to such other address as the recipient may notify from time to time:

For the Authority:

The Secretary (General Administration),
Department of General Administration, Government of Himachal Pradesh,
Armsdale Building, H.P. Secretariat,
Shimla — 171 002, Himachal Pradesh;

E-mail: [●];

For the Operator: [●] {Name of the Operator}, [●] {Registered office address}; E-mail: [●]; Attention: [●] {Designation}.

24.13.2 A notice shall be effective upon actual receipt thereof, save that where it is received after 5:30 p.m. on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received on the next following Business Day.

24.13.3 A Party giving a notice or communication by 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.

24.13.4 Any Party may, by notice, change the address or e-mail address to which notices and communications to it are to be delivered or sent, and such change shall be effective when the other Party has received notice of it.

24.13.5 Routine operational communications between the Nodal Officer and the representative of the Operator may be made by e-mail, and shall be recorded in the correspondence register maintained at the Property.

24.14 Language

24.14.1 All notices, certificates, correspondence, records, reports, statements, drawings, manuals and proceedings under or in connection with this Contract shall be in the English language.

24.14.2 Where any document is furnished in a language other than English, it shall be accompanied by a certified English translation, and in the event of any discrepancy, the English translation shall prevail as between the Parties.

24.15 Amendments

No amendment, modification, variation, addition, deletion or supplement to this Contract shall be valid or effectual unless it is in writing, expressly refers to this Contract, and is executed by the duly authorised representatives of both Parties.

24.16 Counterparts

This Contract may be executed in 2 (two) counterparts, each of which, when executed and delivered, shall constitute an original of this Contract, and both of which together shall constitute one and the same instrument. Each Party shall retain one executed original of this Contract.

IN WITNESS WHEREOF the Parties have executed and delivered this Contract as of the date first above written.

SIGNED, SEALED AND DELIVERED

For and on behalf of **THE GOVERNOR OF THE STATE OF HIMACHAL PRADESH**

_____

(Signature)

Name: [●]

Designation: Secretary (General Administration), Government of Himachal Pradesh

Address: Armsdale Building, H.P. Secretariat, Shimla — 171 002

E-mail: [●]

SIGNED, SEALED AND DELIVERED

For and on behalf of **[●] {Name of the Operator}**

pursuant to the resolution of its Board of Directors / the authority of its designated partners dated [●]

_____

(Signature)

Name: [●]

Designation: Director / Designated Partner / Authorised Signatory

Address: [●]

E-mail: [●]

IN THE PRESENCE OF:

1. Name: _____ Signature: _____

   Address: _____

2. Name: _____ Signature: _____

   Address: _____

SCHEDULE-A: DESCRIPTION OF THE PROPERTY AND THE PLOTS

A.1 The Plots

A.1.1 The Plots comprise:

Sr. No.	Description	Area (sq. m.)	Lease Deed dated
1.	Plot No. 1, Sector-19, Pocket-1, Dwarka, New Delhi	3,197.58	9th January 2024
2.	Plot No. 2, Sector-19, Pocket-1, Dwarka, New Delhi	3,197.58	16th December 2021
	Total	**6,395.16** (approx. 1.6 acres)	

A.1.2 The Plots are owned by the Delhi Development Authority and are held by the Government of Himachal Pradesh on perpetual leasehold basis under the Lease Deeds. The Operator has examined the Lease Deeds and undertakes to comply with, and not to breach, the terms and conditions thereof.

A.2 The Property

A.2.1 The Property comprises the State Guest House known as **"Himachal Niketan"**, constructed on the Plots by the Government of Himachal Pradesh, having a total built-up area of approximately 2.1 (two point one) lakh square feet, and comprising **2 (two) basement levels, 6 (six) upper floors and a terrace**, together with all Project Assets thereat.

A.2.2 The boundaries, dimensions, layout, site plan and floor plans of the Property, and the as-built drawings (including MEP drawings), shall be annexed hereto by the Parties on or before the Effective Date and shall form part of this Schedule-A.

A.2.3 *[Note: The site plan, layout plan, floor plans, MEP drawings and the certified copies of the Lease Deeds are to be annexed to this Schedule-A prior to execution.]*

SCHEDULE-B: ACCOMMODATION, FACILITIES AND AUTHORITY RESERVED ACCOMMODATION

B.1 Part I — Total Accommodation and Facilities at the Property

Sr. No.	Accommodation / Facility	Nos.
1.	VVIP Suites	2
2.	One room with one toilet	77
3.	Two rooms with one toilet	28
	Total guest rooms	**107**
4.	Student dormitories [H(8) F(4)]	2
5.	Drivers' dormitory	1
6.	Sr. Manager room	1
7.	PSO rooms with rest area	3
8.	Office areas	6
9.	Restaurant (80 chairs)	1
10.	Banquet hall (300 persons)	1
11.	Waiting lounges	2
12.	Multi-purpose halls (50 persons each)	2
13.	Souvenir shop	1
14.	Car parking spaces	123
15.	Two-wheeler parking spaces	89

B.2 Part II — Authority Reserved Accommodation and Applicable Charges

Sr. No.	Authority Reserved Accommodation	Nos.	Charges per day (inclusive of GST)
1.	VVIP Suites (reserved solely for His Excellency the Governor of the State of Himachal Pradesh and the Hon'ble Chief Minister of the State of Himachal Pradesh)	2	Free of cost
2.	One room with one toilet (chargeable basis)	15	INR 1,200

Sr. No.	Authority Reserved Accommodation	Nos.	Charges per day (inclusive of GST)
3.	Two rooms with one toilet (chargeable basis)	15	INR 2,000
4.	Student dormitories [H(8) F(4)]	2	INR 500 per bed
5.	PSO rooms with rest area	3	Free of cost
6.	Drivers' dormitory	1	Free of cost
7.	Office areas	6	Free of cost
8.	Car parking spaces	37	Free of cost
9.	Two-wheeler parking spaces	27	Free of cost

B.2.1 The charges specified in Part II above are subject to revision from time to time by the Authority in accordance with Sub-Clause 15.2.1.

B.3 Part III — Operator Operational Accommodation

B.3.1 The Operator Operational Accommodation comprises the balance of the accommodation and facilities set out in Part I above after excluding the Authority Reserved Accommodation set out in Part II, namely:

Sr. No.	Operator Operational Accommodation	Nos.
1.	Guest rooms available for operation by the Operator (107 less 32 reserved)	75
2.	Sr. Manager room	1
3.	Restaurant (80 chairs)	1
4.	Banquet hall (300 persons)	1
5.	Waiting lounges	2
6.	Multi-purpose halls (50 persons each)	2
7.	Souvenir shop	1
8.	Car parking spaces (123 less 37 reserved)	86
9.	Two-wheeler parking spaces (89 less 27 reserved)	62
10.	Advertising, promotional and branding spaces	As available

B.3.2 The Operator Operational Accommodation additionally includes all other facilities, amenities, operational spaces, ancillary services and activities at the Property which are not comprised in the Authority Reserved Accommodation.

SCHEDULE-C: SCOPE OF OMM SERVICES, SPECIFICATIONS AND STANDARDS

C.1 Standards

C.1.1 The Operator shall operate, maintain and manage the Property so as to conform, at all times, to:

(a) the Brand Standards of the Operator;

(b) the guidelines applicable to the 4-Star category of hotels issued by the Ministry of Tourism, Government of India, as the minimum standard;

(c) Good Industry Practice; and

(d) Applicable Laws and Applicable Permits.

C.2 Furnishing Works

C.2.1 The Furnishing Works shall include the procurement, installation and commissioning of all FF&E, OS&E, kitchen and laundry equipment, guest room amenities, MEP fit-out, back-of-house equipment, hospitality technology systems and all other assets required for the efficient, safe and professional operation and management of the Property, in accordance with Clause 11.1.

C.2.2 The Operator shall furnish the Authority Reserved Accommodation to the same standard and quality as the Operator Operational Accommodation, in accordance with Clause 11.3.

C.2.3 Each bed in the student dormitories and the drivers' dormitory shall be provided with a bed, together with a small bedside table and a small cupboard, subject to availability of space and to the prior approval of the Authority.

C.3 Operation and Management Services

C.3.1 Front office and reservations; guest relations and concierge; housekeeping and laundry; F&B and banquet operations; kitchen and stores; security and surveillance; parking management; horticulture and landscaping; waste management; and all ancillary hospitality services.

C.4 Maintenance Services

C.4.1 Planned preventive, routine, periodic and corrective maintenance of all civil, structural, electrical, mechanical, plumbing, HVAC, fire detection and fire-fighting, lift, DG set, water supply, sewage treatment, drainage, IT and communication systems and installations, in accordance with a documented planned preventive maintenance schedule and the applicable annual maintenance contracts.

C.5 Manpower

C.5.1 The Operator shall deploy adequate, qualified, trained and police-verified manpower across all departments, including a General Manager stationed at the Property, an Executive Housekeeper, an Executive Chef, a Front Office Manager, a Chief Engineer / Maintenance Manager, a Security Manager and a Grievance Redressal Officer.

C.6 Reporting

C.6.1 The Operator shall submit the monthly, quarterly and annual reports, statements and certificates specified in Sub-Clauses 5.6, 5.7.6, 12.2.2, 12.3.3, 12.4, 15.2.4 and 17.2.3, together with the incident reports under Sub-Clause 5.3.8, the fire and evacuation drill records under Sub-Clause

5.3.2 and the evidence of Insurance Cover under Article 16; and shall maintain, and furnish to the Nodal Officer, a consolidated reporting calendar setting out, for each such report, its frequency, due date and recipient.

C7 Facilities

C.7.1 The Operator shall provide, operate and maintain, at its cost and to the standards set out in Clause C.1, the following facilities and amenities across the Property:

(a) high-speed broadband internet and Wi-Fi connectivity, with adequate bandwidth and coverage, in all guest rooms, dormitories, banquet and meeting facilities, the lobby, F&B outlets and common areas;

(b) a public address system covering the lobby, corridors, banquet and meeting facilities, common areas and, for safety and emergency-announcement purposes, all guest floors;

(c) background music in the lobby, the restaurant and other F&B outlets, banquet and waiting areas and other common areas, at appropriate and unobtrusive levels;

(d) a restaurant, and such other food and beverage outlets, together with room-service, as required for a facility of this category;

(e) a reception, lobby and lounge area, appropriately furnished and staffed;

(f) signages (in both English & Hindi), wayfinding and display systems, incorporating the name "Himachal Niketan" in accordance with this Contract.

SCHEDULE-D: APPLICABLE PERMITS *(indicative only)*

D.1 The Operator shall, at its own cost, obtain, maintain, comply with and renew all Applicable Permits, including the following (indicative and not exhaustive):

(a) fire safety clearance / no-objection certificate from the Delhi Fire Service;

(b) registration under the Food Safety and Standards Act, 2006 (FSSAI licence);

(c) eating house licence and health trade licence from the competent municipal authority;

(d) consent to establish and consent to operate from the Delhi Pollution Control Committee, and authorisation under the applicable waste management rules;

(e) lift licence and lift inspection certificate;

(f) bar / excise licence, where applicable and permitted;

(g) police clearance and registration of the guest house / hotel with the local police station;

(h) registrations under the Contract Labour (Regulation and Abolition) Act, 1970, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' State Insurance Act, 1948 and the Delhi Shops and Establishments Act, 1954;

(i) registration under the GST legislation, and professional tax registration where applicable; and

(j) such other permits, licences, approvals, consents, registrations and no-objection certificates as may be required under Applicable Laws from time to time.

D.2 The Operator shall furnish certified copies of all Applicable Permits to the Authority within 15 (fifteen) days of issue or renewal, and shall produce the originals for inspection under Sub-Clause 11.2.2.

SCHEDULE-E: FORM OF PERFORMANCE SECURITY (BANK GUARANTEE)

Bank Guarantee No.: [●] **Date:** [●] **Amount:** INR [●] **Valid until:** [●] **Claim period until:** [●]

Issuer of Bank Guarantee:

(Name & Address of Bank Branch)

_____

(Hereinafter referred to as the "**Bank**")

Beneficiary of Bank Guarantee:

The Secretary (General Administration),
Department of General Administration, Government of Himachal Pradesh,
Armsdale Building, H.P. Secretariat, Shimla - 171 002.

Details of the Bank of the Beneficiary

Bank: <> Branch:<> IFSC

Code:<>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

1. OMM Contract (hereinafter referred to as the "**OMM Contract**") to be executed amongst The Secretary, Department of General Administration, Government of Himachal Pradesh, acting for and on behalf of the Governor of State of Himachal Pradesh [Hereinafter referred to as the "**Authority**"] and M/s _____ (name of the Operator) having its registered office at _____ [hereinafter referred to as the "**Operator**"] for the Operation, Management and Maintenance of Himachal Niketan at Dwarka, New Delhi [hereinafter referred to as the "**Project**"], provided, however, such context of the Bank Guarantee or reference to the OMM in this Bank Guarantee shall be in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e. "Performance Security" shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and Irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Operator.

2. As per the terms of the OMM Contract, the Operator is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of Rs._____/- (Rupees in word only) as security for due and punctual performance/ discharge of its obligations under the OMM Contract for the Contract Period.

Operative part of the Bank Guarantee

3. At the request of the Operator, we _____ (name and address of the bank), hereinafter referred to as the (**"Bank"**), do hereby unconditionally and irrevocablyaffirm and undertake that we are the guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Operator, upto a total sum of Rs_____(Rupees in words only), such sum being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.

4. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Operator and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Operator or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs._____ (Rupees in words only).

5. We hereby waive the necessity of the Authority to demand the said amount from the Operator first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.

6. We further agree and affirm that no change or addition to or other modification to the terms of the OMM Contract, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change,addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Operator, which are recoverable by the Authority byinvocation of this Guarantee.

7. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Operator. We undertake that to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _(Rupees in words only) notwithstanding any dispute or disputes raised by the Operator or anyone else in any suit or proceedings before any arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liabilityfor payment under the Guarantee and the Operator shall have no claim against us for making such payment.

10. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till dd/mm/yy

11. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be cashable/ negotiable at the Bank's branch at Shimla, Himachal Pradesh having address at _____

12. Notwithstanding anytime contained herein:

    (i) Our liability under this Bank Guarantee shall not exceed Rs___

(Rupees _____ only).

(ii) The unconditional and irrevocable Bank Guarantee shall be valid w.e.f.__to ____

(iii) We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a writtenclaim or demand on or before___.

Signed and sealed this____day of_20____at ____

SIGNED, SEALED AND DELIVERED

For and on behalf of

The Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

Notes:

(i) The bank guarantee should contain the name, designation and code number of officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well asof issuing Branch should Branch should be mentioned on the covering letter of issuing Branch

SCHEDULE-F: ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is entered into at _____ {Location} on this the _____ {Day} day of _____ {Month}, 20____ {Year} by and amongst:

1. **_____ {Name of Operator}**, a company incorporated under the provisions of the Companies Act, {1956/ 2013} / a limited liability partnership incorporated under the provisions of the Limited Liability Partnership Act, 2008, having corporate identity number/ LLP identification number _____ {Insert Number} and its registered office at _____ {Address} (hereinafter referred to as the **"Operator"**, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. **THE GOVERNOR OF HIMACHAL PRADESH**, through the Department of General Administration, Government of Himachal Pradesh, having its office at _____ {Address} (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes); and

3. **_____ {name and particulars of the Escrow Bank}**, a Nationalised Bank or a Scheduled Commercial Bank in India, having its registered office at _____ {Address} and amongst other places, a branch office at _____ {Address} (hereinafter referred to as the **"Escrow Bank"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns).

WHEREAS:

A. The Authority has entered into a contract dated _____ {Date} with the Operator for the operation, maintenance and management of the State Guest House – Himachal Niketan situated at Plot Nos. 1 and 2, Sector-19, Pocket-1, Dwarka, New Delhi (**"OMM Contract"**) for the Project (as defined in the OMM Contract), and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement; and

B. The OMM Contract requires the Operator 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;

"Authority" means the person referred to as Authority in the foregoing Recitals;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority, to the Operator 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, being the Project specific account required to be opened and maintained by the Operator under the OMM Contract, and shall include the Sub-Accounts;

"Escrow Bank" means the bank referred to as the escrow bank in the foregoing Recitals;

"Escrow Default" has the meaning ascribed thereto in Clause 6.1.1;

"Indemnified Party" has the meaning ascribed thereto in Clause 9.2;

"Indemnifying Party" has the meaning ascribed thereto in Clause 9.2;

"OMM Contract" means the contract 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;

"Operator" means the person referred to as Operator in the foregoing Recitals;

"Parties" means the parties to this Agreement collectively and the term "Party" means any of the parties to this Agreement individually; and

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement has the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the OMM Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the OMM Contract.

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

1.2.3 The rules of interpretation stated in Clause 1.2 of the OMM Contract shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the Authority and the Operator in connection herewith, and authorises 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 Operator 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 and the Operator, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Operator 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 Operator 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 and the Operator 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 Any time prior to the Effective Date (as defined in the OMM Contract), the Operator 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 Operator shall 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 Operator.

2.5 Rights of the parties

Save and except as otherwise provided in the OMM Contract, the rights of the Authority and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Operator shall have no other rights against or to the monies in the Escrow Account.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Operator

3.1.1 The Operator agrees and undertakes that it shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all proceeds, revenues, income and receipts of every nature whatsoever (whether in cash or on credit, and whether received directly or through any payment gateway, aggregator, agent or intermediary) derived directly or indirectly from the Operations and from the Property, including all Revenue Collections and all Usage Dues;

(b) all room charges realised in respect of the chargeable rooms comprised in the Authority Reserved Accommodation, and all amounts realised from the provision of F&B Services to Authority Designated Occupants;

(c) the proceeds of all insurance claims, other than claims in respect of loss of life or personal injury, in accordance with Clause 16.7;

(d) any payments received by the Operator from the Authority, after deduction of any outstanding Annual Contract Fee;

(e) all funds received by the Operator from its shareholders/ partners' contribution, in any manner or form; and

(f) such other amounts as the Operator may, at its option, deposit therein, whereupon the provisions of this Article 6 and of the Escrow Agreement shall apply to such deposits.

3.1.2 The Operator shall procure that in each insurance policy (as provided in the OMM Contract), the Authority shall be named as the loss payee and that the insurer shall pay the proceeds of insurance into the Escrow Account.

3.1.3 The Operator 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 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 therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals

4.1.1 At the beginning of every month or quarter, or at such shorter or longer intervals as the Operator may, by written instructions, determine that the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order, for making due payments, and if such payments are not due in any month, then retain such monies in Escrow Account and pay out therefrom on the Payment Date(s):

(a) statutory payments, all Taxes (as defined in the OMM Contract) due and payable by the Operator for and in respect of the Project (as defined in the OMM Contract);

(b) the Annual Contract Fee (as defined in the OMM Contract) when due and payable to the Authority, together with any interest payable thereon under Sub-Clause 14.2.6 of the OMM Contract;

(c) the second and final instalment of the Upfront OMM Contract Amount (as defined in the OMM Contract), as and when due and payable, together with any interest payable thereon under Sub-Clause 14.2.9 of the OMM Contract; and

(d) all payments as may be due and payable to the Authority pursuant to the OMM Contract; and

(e) balance, if any, in accordance with the instructions of the Operator.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Financial Year, the Operator shall provide to the Escrow Bank 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 if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon expiry or earlier termination of the OMM Contract, 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) payroll dues and statutory payments, all Taxes (as defined in the OMM Contract) due and payable by the Operator for and in respect of the Project (as defined in the OMM Contract);

(b) the outstanding Annual Contract Fee (as defined in the OMM Contract), together with any interest payable thereon under Sub-Clause 14.2.6 of the OMM Contract;

(c) any outstanding instalment of the Upfront OMM Contract Amount (as defined in the OMM Contract), together with any interest accrued thereon under Sub-Clause 14.2.9 of the OMM Contract;

(d) all other amounts which are outstanding to be paid by the Operator to the Authority, as on the date of the expiry or earlier termination of the OMM Contract;

(e) all payments as may be due and payable to the Authority pursuant to the OMM Contract;

(f) balance, if any, in accordance with the instructions of the Operator.

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 or improvement of the Property and the balance remaining, if any, shall be applied in accordance with the instructions of the Operator.

4.5 Authority's Charge

4.5.1 The Authority shall have a first and exclusive charge on all balances in the Escrow Account and on all amounts due and payable by the Operator to the Authority, and the Authority shall be entitled to enforce the charge through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Operator. The Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential liabilities that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Operator hereunder shall be liable to appropriation.

4.5.2 The Operator shall not create any Encumbrance over the inflows and receipts specified in Clause 4.1 and/ or the amounts in the Escrow Account in favour of any person, including in favour of the banks or lending institution overriding or otherwise adversely affecting the interest of the Authority.

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

5.2.1 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 Operator as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account as at the close of business on the immediately preceding business day.

5.2.2 The Escrow Bank shall, within 5 (five) days after the end of every calendar quarter, send quarterly account statements to the Authority (at email ID _____ {Insert}), and provide the Authority with requisite log in credentials to view these account statements.

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 Operator upon a certificate signed by or on behalf of the Operator;

(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 Authority of any notice or document received by it in its capacity, as the Escrow Bank from the Operator, or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Operator of any notice or document received by it from the Authority 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. 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 Operator (an **"Escrow Default"**), unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

(a) the Operator 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 Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account, within a Cure Period of 5 (five) business days; or

(c) the Operator 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 in accordance with the provisions of the OMM Contract.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

7.1.1 This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Operator to the Authority, or any of its obligations to the Authority remains to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.1.2 Without prejudice to the provisions of Clause 7.1.1 above, simultaneous with the termination of this Agreement as per Clause 7.1.1 above, the Operator hereby agrees to execute a new escrow agreement in the same format, subject to the following modifications:

(a) any such escrow agreement shall be terminated only after the expiry or earlier termination of the OMM Contract; and

(b) such other changes and modifications, as may be instructed by the Authority at such time.

7.1.3 Non-execution of the escrow agreement as per Clause 7.1.2 above within a maximum period of 24 (twenty four) hours of the termination of this Agreement as per Clause 7.1.1 above, shall be deemed to be the Operator's Default under the OMM Contract, with consequent remedies available to the Authority including the right of termination of the OMM Contract.

7.2 Substitution of Escrow Bank

7.2.1 The Operator may, by not less than 45 (forty five) days prior notice to the Escrow Bank and the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account, to a new Escrow Account established with the successor Escrow Bank.

7.2.2 The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

8. CLOSURE OF ESCROW ACCOUNT

The Escrow Bank shall, at the request of the Operator made on or after the payment by the Operator of all outstanding amounts under the OMM Contract, including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Operator. Upon closure of the Escrow Account hereunder, this Agreement shall be deemed to be terminated.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Operator will indemnify, defend and hold the Authority and Escrow Bank 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 Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws (as defined in the OMM Contract) and Applicable Permits (as defined in the OMM Contract).

9.1.2 The Authority will indemnify, defend and hold the Operator 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 fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Operator's obligations under the OMM Contract 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 Operator 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 fulfil its obligations under this Agreement materially and adversely affecting the performance of the Operator's obligations under the OMM Contract, 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 indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (**"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (**"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 shall, to the extent possible, be resolved amicably through mutual discussions between the Parties. Failing such amicable resolution within thirty (30) days, the dispute shall be subject to the exclusive jurisdiction of the competent courts at Shimla, Himachal Pradesh.

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 in Shimla 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 professional acts done and performed for business 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 have, may acquire in the future or which may be attributed to it under any jurisdiction; and

(d) consents, 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 OMM Contract and this Agreement, the provisions contained in the OMM Contract 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 considered 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.

It is clarified that the instructions contained in this Agreement shall remain in full force and effect until the obligations set forth in Clause 4.2 have been fully discharged.

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 whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties 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 address are set out under its name on the signing pages hereto. A

notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 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.

SIGNED, SEALED AND DELIVERED

For and on behalf of the Operator:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Authority:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Escrow Bank:

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

In the presence of:

1. _____ 2. _____

SCHEDULE-G: JOINT INVENTORY AND CONDITION REPORT

G.1 The Joint Inventory and Condition Report shall be jointly prepared, signed and recorded by the authorised representatives of the Authority and the Operator prior to the Effective Date, in accordance with Sub-Clause 3.2.3, and shall upon signature be annexed hereto and form an integral part of this Contract.

G.2 The Joint Inventory and Condition Report shall be prepared in the following format, and shall separately record the assets of the Authority Reserved Accommodation and of the Operator Operational Accommodation:

Sr. No.	**Description of asset / facility**	**Location / Floor**	**Qty.**	**Make / Model / Specification**	**Condition as on Effective Date**
1.	[●]	[●]	[●]	[●]	[●]
2.	[●]	[●]	[●]	[●]	[●]
3.	[●]	[●]	[●]	[●]	[●]

G.3 The Joint Inventory and Condition Report shall be accompanied by:

(a) a photographic and video record of the Property and the Handover Assets as on the Effective Date;

(b) copies of the as-built drawings, including MEP drawings, as available with the Authority;

(c) copies of the annual maintenance contracts and warranties subsisting in respect of the installations, equipment, plant and machinery installed by the GoHP; and

(d) a list of the Applicable Permits, utility connections and meter readings as on the Effective Date.

G.4 The Joint Inventory and Condition Report shall constitute the baseline against which the condition of the Property and the Handover Assets shall be assessed for the purposes of Clause 20.2 upon Divestment.

For and on behalf of the Authority: _____

Name / Designation / Date

For and on behalf of the Operator: _____

Name / Designation / Date

SCHEDULE-H: F&B MENU AND RATES FOR AUTHORITY DESIGNATED OCCUPANTS

The following menu and rates shall apply to the F&B Services provided to the Authority Designated Occupants in accordance with Clause 15.3.

Sr. No.	Food & Beverage	Quantity	Rate (INR)
(A)	**Tea, Coffee & Beverages**		
1.	Tea	1 cup	15.00
2.	Tea (half set)	2 cups	25.00
3.	Tea (full set)	4 cups	50.00
4.	Coffee	1 cup	25.00
5.	Coffee (half set)	2 cups	50.00
6.	Coffee (full set)	4 cups	90.00
7.	Milk	200 ml	30.00
8.	Lassi	200 ml	30.00
9.	Bournvita milk	200 ml	40.00
10.	Cornflakes with milk	200 ml	60.00
11.	Juice / cold drinks etc.	Per bottle	At MRP
(B)	**Snacks**		
1.	Veg. cutlet	1 plate	50.00
2.	Veg. pakora	1 plate	50.00
3.	Cheese cutlet	1 plate	80.00
(C)	**Breakfast**		
1.	Veg. sandwich	1 plate	45.00
2.	Cheese sandwich	1 plate	75.00
3.	Butter slice	1 plate	20.00
4.	Puri bhaji	1 plate	50.00
5.	Chana bhatura	1 plate	50.00
6.	Idli sambhar	1 plate	50.00
7.	Sambhar vada	1 plate	50.00
8.	Uttapam sambhar	1 plate	60.00

Sr. No.	Food & Beverage	Quantity	Rate (INR)
9.	Stuffed parantha (2 pieces)	1 plate	50.00
10.	Omelette with slice	1 plate	50.00
(D)	**Lunch & Dinner**		
1.	Veg. thali with rice	1 plate	116.00
2.	Green salad	1 plate	25.00
3.	Curd raita	1 plate	40.00
4.	Dal	1 plate	40.00
5.	Shahi paneer	1 plate	120.00
6.	Mutter mushroom	1 plate	120.00
7.	Veg. mixed / green	1 plate	50.00
8.	Chicken curry	1 plate	150.00
9.	Roti	1 roti	10.00
10.	Plain rice	1 plate	35.00
11.	Fried rice	1 plate	60.00
12.	Curd / raita	1 plate	40.00
13.	Staff meal	1 plate	50.00
(E)	**Soup**		
1.	Veg. soup	1 no.	45.00
2.	Tomato soup	1 no.	45.00
3.	Mushroom soup	1 no.	55.00
4.	Chicken soup	1 no.	70.00
(F)	**Sweet**		
1.	Kheer	1 plate	50.00

Note:

1. If any food or beverage ordered is outside this menu, the official, student or driver concerned shall be liable to pay for the same at the standard rates charged by the Operator from other guests.
2. The menu and the rates set out in this Schedule-H are subject to revision from time to time by the Authority upon written intimation to the Operator, in accordance with Sub-Clause 15.3.1.

SCHEDULE-I: FORM OF VESTING CERTIFICATE

1. This Vesting Certificate is issued under and in accordance with Clause 20.5 of the Contract for Operation, Maintenance and Management of the State Guest House - Himachal Niketan dated [●] (the "OMM Contract") executed between the Governor of the State of Himachal Pradesh, acting through the Secretary (General Administration), Department of General Administration (the "Authority") and [●] {Name of the Operator} (the "Operator").

2. The Authority hereby certifies that the Operator has, on [●] {date}, complied with the Divestment Requirements set out in Clause 20.1 of the OMM Contract, and with Clauses 20.2, 20.3 and 20.4 thereof, to the satisfaction of the Authority.

3. The Property and the Project Assets, as more particularly described in Schedule-A and in the Joint Inventory and Condition Report at Schedule-G to the OMM Contract, together with all alterations, additions, modifications, improvements and betterments thereto, and all Operator Created Assets not permitted to be removed under Clause 20.1 of the OMM Contract, have vested in the Authority free from all Encumbrances, and the Authority has resumed unimpeded and exclusive possession and control thereof with effect from [●] {date}, being the **Divestment Date**.

4. The Operator stands discharged of its obligations under the OMM Contract, save in respect of: (a) the obligations which survive Termination under Clause 19.4; (b) the liability for defects under Clause 19.5 for a period of 6 (six) months from the Divestment Date; and (c) the indemnities under Article 22.

5. The issue of this Vesting Certificate is without prejudice to any right, claim or remedy of the Authority which has accrued prior to the date hereof.

For and on behalf of the Authority

_____

Secretary (General Administration), Government of Himachal Pradesh

Date: [●]

Place: [●]

SCHEDULE-J

TABLE OF DAMAGES

Sr. No.	Nature of defect, deficiency or non-compliance	Reference Clause	Cure Period	Rate of Damages
CATEGORY I — CRITICAL / HIGH-RISK DEFECTS AND NON-COMPLIANCES				
I-1	Any fire detection, fire alarm, sprinkler, hydrant, extinguisher, emergency lighting, exit signage, public address or other fire, life-safety or emergency system serving the Property, the Authority Reserved Accommodation or the common areas being found inoperative, disabled, bypassed, isolated or not maintained; or any means of escape, exit route, staircase or refuge area being found blocked, locked or obstructed.	5.3.1; 5.3.2; 12.4.2(b); C.4.1	24 hours	**INR 50,000 per day**
I-2	Expiry, lapse, suspension, cancellation, revocation or non-renewal of the fire safety clearance / no-objection certificate, or of any other Applicable Permit necessary for the lawful occupation, operation or use of the Property.	5.1; 11.2.1(c); Schedule-D	7 days	**INR 30,000 per day**
I-3	Lapse, cancellation, non-renewal or non-maintenance of any Insurance Cover required to be procured and maintained under Article 16 (without prejudice to Clause 16.8, and subject to Sub-Clause 12.5.10).	Article 16	7 days	**INR 30,000 per day**
I-4	Any deterioration, unsafe condition, defect or damage arising out of deferred or poor maintenance, or any OMM Services non-compliance relating to the Property, the Authority Reserved Accommodation or the common areas (other than a Structural Defect for which the Authority is responsible), notified under Sub-Clause 12.4.4 and remaining uncured.	12.4.4; 12.4.5	As specified in the notice, plus 30 days	**INR 20,000 per day**
I-5	Failure to ensure the availability of either of the 2 (two) VVIP Suites, on any occasion beyond the 2 (two) occasions permitted in an Accounting Year.	15.1.4 (proviso); 15.1.5	Nil	**INR 25,000 per Suite per day**
I-6	Booking, allotment, offering, letting or making available any part of the Authority Reserved Accommodation to any person other than an Authority Designated Occupant.	15.1.2	Nil	**INR 25,000 per room or unit per day**
I-7	Non-functioning of closed-circuit television surveillance, access control, screening or other security systems serving the Authority	5.3.1; 5.3.7; C.5.1	3 days	**INR 20,000 per day**

Sr. No.	Nature of defect, deficiency or non-compliance	Reference Clause	Cure Period	Rate of Damages
	Reserved Accommodation or the common areas; or deployment of personnel without police verification / Police Clearance Certificate where required.			
I-8	Interruption or failure of electricity supply (including DG back-up), water supply, sewage treatment, lifts or HVAC serving the Authority Reserved Accommodation or the common areas continuing for more than 24 (twenty-four) continuous hours, otherwise than by reason of a Force Majeure Event or a shutdown approved in advance by the Nodal Officer.	12.2; C.4.1	24 hours	**INR 20,000 per day**
I-9	Any structural alteration, addition, demolition or modification of the Property, or any work affecting the structural integrity or the external façade of the Property, undertaken without the prior written approval of the Authority.	5.9; 19.1.1(h)	7 days to cease and commence restoration	**INR 25,000 per day until restoration**
I-10	Failure to comply with any direction issued by the Authority under Clause 7.3 in an Emergency, within the time stipulated therein.	7.3	As specified in the direction	**INR 25,000 per day**
CATEGORY II — SIGNIFICANT DEFECTS AND NON-COMPLIANCES				
II-1	The Authority Reserved Accommodation, or the common areas serving the same, not being furnished, equipped, serviced or maintained to a standard and quality equal to and at par with the Operator Operational Accommodation and the Brand Standards.	11.3.1; 15.1.6	15 days	**INR 20,000 per day**
II-2	Failure to carry out, within the time specified, any remedial measure notified under Sub-Clause 12.4.4 in respect of the Authority Reserved Accommodation or the common areas, not falling within Category I.	12.4.4	As specified in the notice (not less than 15 days)	**INR 15,000 per day**
II-3	Reduction, curtailment, discontinuance or suspension of any service, facility or amenity available at the Property without the prior written approval of the Authority, insofar as the same affects the Authority Reserved Accommodation or the common areas.	12.2.4	7 days	**INR 25,000 per day**
II-4	Failure to establish or maintain the grievance redressal mechanism, including the dedicated telephone number, e-mail address, physical complaint register and nominated Grievance Redressal Officer.	12.3.1; 12.3.4	7 days	**INR 10,000 per day**

Sr. No.	Nature of defect, deficiency or non-compliance	Reference Clause	Cure Period	Rate of Damages
II-5	Non-compliance with Applicable Labour Laws, or non-payment of wages or statutory dues, in respect of personnel deployed at the Property, insofar as the same is established by an order, notice or finding of a competent authority.	5.4	15 days	**INR 25,000 per day**
II-6	Failure to conduct fire and evacuation drills at intervals of not more than 6 (six) months, or failure to periodically test the fire, life-safety and emergency systems.	5.3.2	15 days	**INR 10,000 per day**

The Damages specified in this Schedule-J represent a genuine pre-estimate of the loss likely to be suffered by the Authority, agreed between the Parties as reasonable compensation and not as a penalty, within the meaning of Sub-Clause 1.2.1(r), and the Authority shall not be required to prove actual loss or damage in respect thereof.

The rates specified in this Schedule-J shall escalate at the rate of 5% (five per cent) every 5 years with effect from each 5th anniversary of the Fee Commencement Date, and shall be rounded to the nearest INR 1,000.