

Annexure – 3: DRAFT OF *CONCESSION AGREEMENT*

**CONCESSION AGREEMENT
BY AND BETWEEN**

[•]

(As the Licensing Authority)

AND

[•]

(As the Concessionaire)

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[To be duly stamped and registered]

This Agreement (“Concession **Agreement**”) is entered into at New Delhi on this the ___ day of _____ 2020 (“**Execution Date**”):

BY AND BETWEEN

[a *Special Purpose Vehicle incorporated by India Trade Promotion Organisation*], which is a company registered under the Indian Companies Act, [1956/2013] and having its registered office at Pragati Maidan, Delhi, India represented by [Name of the authorized signatory] authorised by (hereinafter referred to as the “LICENSING AUTHORITY” which expression shall, unless repugnant to the context or meaning thereof be deemed mean and include its representatives, successors and permitted assigns) of the **One Part**;

AND

M/s. _____ a company incorporated under the Companies Act, [1956/2013], and having its registered office at _____ represented by [Name of the authorized signatory], authorized signatory as per the resolution passed by its Board of Directors on _____ (hereinafter referred to as the “**CONCESSIONAIRE**” which expression shall, unless repugnant to the context or meaning thereof be deemed mean and include its representatives, successors and permitted assigns) of the **Other Part**.

(The Licensing Authority and the Concessionaire are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”)

WHEREAS:

Recital A. The Licensing Authority has leased from “India Trade Promotion Organisation” (referred hereinafter as ITPO) and is in possession of property being site admeasuring 3.70 acres (equivalent to 14973 square meters) situated at the IECC (*defined hereafter*), more particularly described in the **Schedule** hereunder (referred hereinafter as “**Land earmarked for the Hotel or Hotel Premises**”);

Recital B. The Licensing Authority through ITPO had invited bids/ proposals from eligible bidders *vide* the RFP (*defined hereafter*) for selection of a Concessionaire as a developer and operator for construction, development, completion, operation and management of a 5 (five) star hotel on the land earmarked for the hotel (“**Project**”). The land earmarked for the Hotel along with the construction of the hotel premises to be developed and operated by the Concessionaire in terms of this **CONCESSION AGREEMENT** and RFP Documents (*defined hereafter*), are hereinafter collectively referred to as the “**Hotel Premises**”;

Recital C. The Concessionaire, had submitted a proposal against the RFP; of all the proposals submitted by eligible bidders against the RFP, the Concessionaire has been selected as the successful bidder. Therefore, the Licensing Authority has licensed the Land earmarked for the Hotel on right to use basis for period of 60 (sixty) years, by way of letter of award bearing no _____ (“**Letter of Award**”) dated _____;

Recital D. The Concessionaire shall be provided physical possession of the Land earmarked for the Hotel within 30 (thirty) days of the Execution Date along with the execution and delivery of the Possession Letter (*defined hereafter*) by the Parties, exclusively for the Project;

Recital E. Now therefore, relying on the representations, warranties, covenants and undertakings made by the Concessionaire, the Parties are entering into this Concession Agreement on the terms and conditions set out herein below and the vacant possession of the Land earmarked for the Hotel shall be delivered to the Concessionaire separately in terms hereof.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS AND AGREEMENTS SET FORTH IN THIS CONCESSION 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 In this **CONCESSION AGREEMENT**, unless the context otherwise requires, the following words and expressions shall bear the meanings ascribed to them below. Capitalized terms used but not defined shall have the same meaning as ascribed to them under the RFP Documents.

- 1.1.1 **"Affected Party"** shall be the party claiming the benefit of Force Majeure as explained under Clause 19 herein.
- 1.1.2 **"Applicable Law"** shall mean all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Government Authority or Person acting under the authority of any Government Authority and / or of any statutory authority in the Republic of India and specifically including the National Capital Territory of Delhi, whether in effect on the date of this **CONCESSION AGREEMENT** or thereafter.
- 1.1.3 **"Applicable Permits"** means all clearances, permits, authorizations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or maintained by the Concessionaire in terms of this **CONCESSION AGREEMENT** in relation to construction, development, completion, occupation, use, operation, maintenance and management of the Land earmarked for the Hotel and Hotel Premises, as applicable, under or pursuant to any Applicable Law.
- 1.1.4 **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in the bidding process under the RFP or the issuance of the Letter of Award or the execution of the RFP Documents or this **CONCESSION AGREEMENT**.
- 1.1.5 **"Control"** shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.6 **"Corrupt Practice"** means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the bidding process. For avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Licensing Authority or ITPO who is or has been associated in any manner, directly or indirectly, with the bidding process or the Letter of Award or has dealt with matters concerning the **CONCESSION AGREEMENT** or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Licensing Authority or ITPO, shall be deemed to constitute influencing the actions of a Person connected with the bidding process. **"Director"** shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.7 **"Encumbrance"** shall mean any mortgage, pledge, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, security interest, encumbrance, title defect, title retention agreement, interest, option, lien, charge, commitment, restriction or limitation of any nature whatsoever, including restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.
- 1.1.8 **"Execution Date"** shall mean the date of execution and delivery of this **CONCESSION AGREEMENT**.
- 1.1.9 **"FAR"** shall have the meaning ascribed to it in Clause 14 herein.
- 1.1.10 **"Financial Year"** shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.11 **"Fraudulent Practice"** means a misrepresentation or omission or nondisclosure or suppression of facts or information or disclosure of incomplete or incorrect facts or

- information, in order to influence in any manner, directly or indirectly, the bidding process or the issuance of the Letter of Award or the execution of this **CONCESSION AGREEMENT**.
- 1.1.12 **“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 19 herein.
- 1.1.13 **“Government Authority”** shall mean any government authority, statutory authority, government department, agency, commission, board, tribunal or court or other law, rule or regulation making entity having or purporting to have jurisdiction on behalf of the Republic of India or any state or other subdivision thereof or any municipality, district or other subdivision thereof, including the development authority and municipal/local authority having jurisdiction over the Land earmarked for the Hotel and Hotel Premises, as applicable.
- 1.1.14 **“Land earmarked for the Hotel”** shall have the meaning ascribed to it in Recital A herein;
- 1.1.15 **“IECC”** shall mean the International Exhibition-cum-Convention Centre admeasuring constructed area of approximately. 3,82,000 square meters, comprising of convention center and exhibition halls, administration building and basement being developed by the “India Trade Promotion Organisation” at Pragati Maidan.
- 1.1.16 **“CONCESSION AGREEMENT”** shall mean this **CONCESSION AGREEMENT** including the Schedules and annexures hereto, as modified, from time to time, in accordance with the terms herein.
- 1.1.17 **“Letter of Award”** shall have the meaning ascribed to it in Recital C, herein.
- 1.1.18 **“Concessionaire Event of Default”** shall have the meaning ascribed to it in Clause 20 herein.
- 1.1.19 **“Hotel Premises”** shall have the meaning ascribed to it in Recital B, herein.
- 1.1.20 **“Pre-estimated Damages”** shall have the meaning ascribed to it in Clause 21 herein.
- 1.1.21 **“Master Plan”** means the master plan for Delhi as notified by Delhi Development Authority or any Competent Authority as in force from time to time.
- 1.1.22 **“Operationalized”** shall have the meaning ascribed to it in Clause 3.1 herein.
- 1.1.23 **“Person”** means any natural person, limited or unlimited liability company, corporation (including any non-profit corporation), partnership (whether registered, unregistered, general, limited or unlimited), sole proprietorship, unincorporated association, joint venture, joint stock company, Hindu undivided family, estate, trust, firm, union, association, Government Authority, government or other enterprise, association, organization or trust or entity whether or not required to be incorporated or registered under law or any agency or political subdivision thereof or any other entity that may be treated as a person under Applicable Law.
- 1.1.24 **“Performance Guarantee”** shall have the meaning ascribed to it in Clause 8.1 herein.
- 1.1.25 **“Possession Letter”** shall have the meaning ascribed to it in Clause 10.1 herein.
- 1.1.26 **“License Fee”** shall have the meaning ascribed to it in Clauses 5 and 6 herein.
- 1.1.27 **“RFP”** shall mean the request for proposal no.: ITPO/MSTC/Concession for 5-Star Hotel/RFP/20-21/01.
- 1.1.28 **“RFP Documents”** shall collectively mean the RFP including, the Letter of Award and the documents submitted by the Concessionaire in accordance with the terms and conditions of the RFP.
- 1.1.29 **“Rs.”** or **“INR”** or **“Rupee”** means Indian Rupee, being the lawful currency of the Republic of India.
- 1.1.30 **“Taxes”** shall mean and include all general and special taxes, duties and levies, whether ordinary or extraordinary, including existing and future assessments for property, income, goods or services of any description by whatever name called now or in future which may be lawfully charged, assessed, or imposed upon all or

any portion of the Hotel Premises (as the same may be increased or diminished from time to time during the Term) on both the Land earmarked for the Hotel and all improvements contained thereon and/or the Concessionaire's business;

- 1.1.31 **"Term"** shall refer to the term of Concession Agreement shall have the meaning ascribed to it in Clause 4 herein;
- 1.1.32 **"Undesirable Practice"** means establishing any contact by any means whatsoever, directly or indirectly, with or without the use of any Coercive Practice, with any Person or Persons connected with or employed or engaged by the Licensing Authority or ITPO, with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process, the selection or non-selection of a Bidder, the issuance of the Letter of Award or the execution of the **CONCESSION AGREEMENT**; or violation of any Applicable Law.

2. Principles of interpretation

Unless the context of this CONCESSION AGREEMENT otherwise requires:

- 2.1 References in the singular shall include references in the plural and vice versa;
- 2.2 Any reference, in this **CONCESSION AGREEMENT**, to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision, and to all statutory instruments, orders and regulations for the time being, made pursuant to it or deriving validity from it, as may be, from time to time, amended, modified, extended or re-enacted, whether before or after the date of this **CONCESSION AGREEMENT**.
- 2.3 The words "hereof," "herein", "hereunder" and words of similar import when used in this **CONCESSION AGREEMENT** shall refer to this **CONCESSION AGREEMENT** as a whole and not to any particular provision of this **CONCESSION AGREEMENT**. The words "include" and "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import.
- 2.4 The headings in this **CONCESSION AGREEMENT** are intended for convenience only and shall not, in any way, affect the meaning or construction of the agreement as a whole or any provision therein.
- 2.5 References to a Clause, Schedule and Annexure shall, except where the context otherwise requires, be a reference to the Clause, Schedule and Annexure to this **CONCESSION AGREEMENT**;
- 2.6 References to days, months and years are references to calendar days, calendar months and calendar years respectively.
- 2.7 The Recitals, Schedules and Annexure to this **CONCESSION AGREEMENT** form an integral part of this **CONCESSION AGREEMENT** and will be of full force and effect as though they were expressly set out in the body of the **CONCESSION AGREEMENT**.

3. GRANT OF LICENSE

- 3.1 Subject to the provisions of this **CONCESSION AGREEMENT** and relying on the representations, warranties, covenants and undertakings made by the Concessionaire in this **CONCESSION AGREEMENT** and the RFP Documents, the Licensing Authority hereby grants unto the Concessionaire with effect from the Execution Date, License of the Land earmarked for the Hotel for the sole and exclusive purpose of the Project. The Concessionaire shall implement the said Project as per the terms of the RFP Documents and this **CONCESSION AGREEMENT**. The Concessionaire shall implement the Project and Operationalize the Hotel Premises within 5 (five) years from date of execution of this **CONCESSION AGREEMENT**. During the Term, the Concessionaire shall only have licensing rights in respect of the Land earmarked for the Hotel and subsequently the Hotel Premises, as applicable. The Concessionaire, while submitting its bid in the RFP, has proposed to develop the Project with __ number of rooms. The Hotel Premises shall be deemed **"Operationalized"** when fully functional, along with all the amenities as stipulated of 150 rooms and/or suites, of the Hotel Premises are opened for stay to prospective guests.
- 3.2 During the Term, the Licensing Authority shall not have any liability in relation to the Land

earmarked for the Hotel and the Hotel Premises. The Concessionaire confirms to the Licensing Authority that it has inspected the Land earmarked for the Hotel and fully understands and comprehends the requirements of the Land earmarked for the Hotel being taken on license and the Project. The Concessionaire has made independent assessment of taking the Land earmarked for the Hotel on license and the Concessionaire shall not make any claim regarding any change in market, suitability or business conditions as a reason for non-payment of the License Fee or non-performance of any other terms and conditions of this **CONCESSION AGREEMENT**.

4. TERM

- 4.1 Subject to compliance by the Concessionaire of each of the terms and conditions set out under this **CONCESSION AGREEMENT** and RFP Documents and timely performance of all of the Concessionaire's obligations including timely payment of License Fee to the Licensing Authority, the License of the Hotel Premises hereby granted to the Concessionaire shall commence from the Execution Date and shall remain in force for a period of 60 (sixty) years thereafter ("**Term**"), unless terminated at an earlier date in accordance with the provisions of this **CONCESSION AGREEMENT**.
- 4.2 The Licensing Authority may terminate this **CONCESSION AGREEMENT**, in accordance with Clause 19. Upon expiration of the Term or termination of this **CONCESSION AGREEMENT** in accordance with Clause 19, the license hereby granted shall stand cancelled and revoked forthwith but without prejudice to the rights of the Licensing Authority against the Concessionaire in respect of any matter or thing occurring or arising prior to such termination or expiration.
- 4.3 On expiry of the Term or early termination of this **CONCESSION AGREEMENT** by the Licensing Authority, the Concessionaire shall handover to the Licensing Authority, vacant and peaceful possession of the Hotel Premises, together with all buildings and fixtures, free from all Encumbrances and originals of all Applicable Permits and other documents relating to the Hotel Premises, within **45 (Forty Five)** days of such expiry or termination, and shall execute such instrument(s) and deeds as the Licensing Authority may require the Concessionaire to execute. Upon such expiry of the Term or early termination of this **CONCESSION AGREEMENT**, the Concessionaire shall ensure that its officers, employees, agents, guests and all other personnel remove themselves and their belongings from the Hotel Premises. The Concessionaire shall ensure that the building and other immovable structures constructed at the Hotel Premises are not damaged, moved, destroyed in any manner, along with fixtures or permanent fittings or objects, which may lead to any form of structural damage to the property at the Hotel Premises. The Concessionaire shall have the right to remove all movables at the end of the term without causing any damage of whatsoever nature including but not limited to structural damage to the hotel premises. On the date of expiry or termination of the Term, as applicable, the Hotel Premises, including the beneficial ownership, right, title and interest in the property at the Hotel Premises will stand transferred to the Licensing Authority without compensation to be paid to the Concessionaire and without any rights of the Concessionaire whatsoever and the Licensing Authority shall be:
- 4.3.1 deemed to have forthwith taken possession and control of the Hotel Premises, and property thereupon including all moveable and immoveable properties thereon;
 - 4.3.2 entitled to restrain the Concessionaire and any person or entity claiming through or under the Concessionaire from entering upon the Hotel Premises or any part thereof; and
 - 4.3.3 have the complete and absolute right to undertake operation, management and maintenance of the Hotel Premises or to appoint an entity for the said purpose without any objection or hindrance from the Concessionaire
- 4.4 The Concessionaire further confirms that all risks, losses, Taxes, liabilities and payments for the utility services and other charges to keep the operation of the Hotel going or arising in connection

with the Hotel Premises and properties therein for the period during which the Concessionaire is in occupation of the Hotel Premises are and shall forever remain the absolute liability and responsibility of the Concessionaire alone and the Licensing Authority shall assume no liability, responsibility or obligation, monetary or otherwise, in relation to the period during which the Concessionaire was in occupation of the Hotel Premises.

5. UPFRONT LICENSE FEE

- 5.1 The Concessionaire shall pay to the Licensing Authority an “Upfront License Fee” as detailed below:
- 5.1.1 The upfront license fee shall be Rs 200 Crore, payable in 8 equal half yearly installments starting from Date of signing of this Concession Agreement.
 - 5.1.2 Each installment of upfront license fee shall be payable atleast 7 days before the starting of each half year. i.e. the first installment of Rs 25 Crore has been paid atleast 7 days before the signing of this Concession Agreement by the Concessionaire to the Licensing Authority. The second installment would be due 7 days before date of signing of Concession Agreement plus 6 calendar months.
 - 5.1.3 Along with payment of upfront fee in clause 5.1.1 above, the Concessionaire will be liable to pay Annual License Fee as per clause 6 hereinafter. Further it may be noted that in case there is any delay in payment of any installment and/or annual license fee by the Concessionaire, the next payment (installment or license fee) will automatically become payable as per its schedule as per the terms of this agreement.

6. ANNUAL LICENSE FEE

- 6.1 The Concessionaire shall pay to the Licensing Authority “Annual License Fee” as detailed below:
- 6.1.1 The License fee for any year will be the Minimum Benchmarked Fee or the Variable License Fee, whichever is higher
 - 6.1.2 Minimum Benchmarked Fee (MBF): The Minimum Benchmarked Fee is the yearly minimum fee payable by the Concessionaire to the Licensing Authority irrespective of any other factor. The base MBF will be Rs 15 Cr per year for the term of this agreement. The MBF will escalate by 20% every 10 years from date of signing of Concession Agreement. (eg: for first 10 years MBF will be Rs 15.00 Cr per year, for the next 10 years MBF will be Rs 18 Cr per year, next 10 years will be Rs 21.60 Cr and so on)
 - 6.1.3 Variable License Fee: Variable License Fee will be calculated as variable fee parameter multiplied by Gross Revenue of the Hotel (constructed by Concessionaire) rounded down to nearest Rs thousand. (i.e. fee of Rs 15,15,755/- will be considered Rs 15,15,000)
 - 6.1.4 Variable Fee parameter: while participating in the RFP, the Concessionaire has quoted the highest value of ___ X ___ % (percent) as the Variable Fee parameter. The Variable Fee parameter will automatically increase after 30 years by 5%. (i.e. for first 30 years of concession agreement the parameter will be ___ X ___% and in the next 30 years of concession agreement it will be ___X+5___%).
 - 6.1.5 Discount on Annual License Fee may be granted as per Special Clause hereinafter mentioned at 36.2.
 - 6.1.6 During the Construction phase of the Hotel (i.e. upto the date of issue of letter from Statutory Auditor of the Concessionaire confirming operationalization of the Hotel), the Concessionaire will pay yearly to the

Licensing Authority an amount equal to Minimum Benchmarked Fee. The amount will be remitted by the Concessionaire within 7 days of start of the Financial year (i.e. upto 7th April of each year).

- 6.1.7 Once the Hotel is operational, at the beginning of each financial year the Concessionaire will pay to the Licensing Authority the minimum benchmarked fee for that year (including that year's escalation). The amount will be remitted by the Concessionaire within 7 days of start of the Financial year (i.e. upto 7th April). At the end of that Financial year, within a period not exceeding 3 months (i.e. 30th June), the Concessionaire will present to the Licensing Authority a statement of Gross Annual revenue certified by their statutory Auditor for that year. Based on the statement and variable fee parameter the variable license fee for that year will be calculated. In case the variable fee is greater than Minimum benchmarked fee, the operator will be liable to pay the differential amount to the Licensing Authority within 7 days (i.e. 7th July). In the event of operationalization of the Hotel during mid-year, the proportionate MBF or the variable license fee, whichever is higher will be payable for the part of the year after the date of operationalization of the Hotel.
- 6.1.8 GST and other applicable indirect taxes and/or statutory duties/levies etc. will be payable by the Concessionaire over and above the license fee each year and it would not be the liability of the Licensing Authority.
- 6.1.9 Calculation of Gross Revenue: "Gross Revenue" of the Hotel for any Financial Year shall mean the total amount of revenue and receipts of every kind (from both cash and credit transactions) derived by the Operator from the operation of the Hotel and its facilities, as certified by the statutory auditors of the Operator, including receipts from room occupancy charges, room service charges, telephone, telefax and telex charges, laundry, sale of food, beverages, liquor, recreational amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, receipts from vending machines; parking, restaurants, banquet, convention/exhibition/ meeting halls, commercial or other spaces on account of rent and / or License fee from the sub-Licensees of every description and kind, and the recovery in respect of any other service or facility provided by the Concessioner to the users / guests of the said Property, which are availed/ realized by the Concessioner from an outside party(s) at a consideration BUT shall exclude and be arrived at after deducting the following:-
- 6.1.9.1 all statutory applicable indirect taxes such as luxury tax, sales tax, entertainment tax, expenditure tax, service tax, goods & services tax and the like by whatever name called now or in future, which the operator has agreed to pay or is bound to pay;
 - 6.1.9.2 revenue on sale of assets of capital nature owned by the Concessionaire; and
 - 6.1.9.3 interest income from investments made.
- 6.1.10 The License Fee shall be payable through RTGS/ NEFT/ IMPS mechanism in to the following bank account of the Licensing Authority and any change in such account details shall be communicated by the Licensing Authority to the Concessionaire:

Bank Name	:	[to be inserted]
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Account Number	:	[to be inserted]
Beneficiary Name	:	[to be inserted]
IFSC Code	:	[to be inserted]
Branch	:	[to be inserted]

7. OTHER CHARGES

- 7.1 **Utility Charges:** The Concessionaire shall be responsible for and shall make, on a regular and timely basis, payments for all utility charges in respect of the Hotel Premises during the entire Term, including water, electricity, telecommunications, internet, cable charges, municipal solid waste, and other utilities. All such payments shall be made by the Concessionaire directly to the service provider(s) providing such services, failure in respect of which would entitle the services being disconnected as per rules of the service provider, and the Concessionaire shall keep and hold the Licensing Authority harmless and indemnified in this regard. The Concessionaire shall also pay the charges for various servicing and common facilities and up-keep and maintenance of roads, water supply, drainage, sewage disposal, street lighting and the like to the relevant agencies.
- 7.2 **Service Tax/ GST/ VAT and other Taxes:** It is specifically agreed by the Concessionaire that the License Fee is exclusive of all Taxes levied or charged as per Applicable Law and the same shall be borne and paid by the Concessionaire alone. The Concessionaire shall bear pay and discharge all existing and future amounts, Property Tax, duties, imposing and outgoing of whatsoever taxes imposed or charged upon the Land earmarked for the Hotel and Hotel Premises or upon the occupier in respect thereof from the Execution Date. It is clearly understood that the property tax paid by the Concessionaire shall not give it any better right to use the property other than what is expressly mentioned herein. It is agreed and understood that each Party shall bear their respective income tax/other direct taxes, arising out of the license granted under this **CONCESSION AGREEMENT**.

8. PERFORMANCE GUARANTEE/SECURITY DEPOSIT

- 8.1 The Concessionaire has submitted an irrevocable and unconditional performance bank guarantee (“**Performance Guarantee**”) of Rs. 75 Crore (Rupees Seventy Five crore only) as guaranteeing the due performance by the Concessionaire of its role, responsibilities and obligations under the **CONCESSION AGREEMENT** and implementation of the Project within the timelines stipulated in this **CONCESSION AGREEMENT** and as set out herein below to be valid for **at least 6 years** from date of execution of this Agreement. The Concessionaire understands, acknowledges and hereby accepts that the said Performance Guarantee may be appropriated or encashed by the Licensing Authority, as per the discretion of the Licensing Authority, in case of non-compliance of timelines and obligations stipulated in this **CONCESSION AGREEMENT** and the RFP Documents. Further, the Concessionaire agrees that all decisions of the Licensing Authority with regard to appropriation or encashment of the Performance Guarantee shall be binding on the Concessionaire. The Performance Guarantee shall be returned to the Concessionaire by the Licensing Authority upon completion of all the Parameters and submission of Security Deposit in terms of this **CONCESSION AGREEMENT**.
- 8.2 . The Licensing Authority shall be entitled to appropriate or encash the Performance Guarantee at any point until receipt of the Security Deposit as per clause 8.3 hereinafter by the Licensing Authority:
- 8.2.1 in the event of any breach of any of the terms or conditions of this **CONCESSION AGREEMENT** and/or the RFP Documents;

- 8.2.2 against any amount imposed as a penalty and adjustment for all loses/damages suffered by the Licensing Authority for any non-compliance with this CONCESSION AGREEMENT or the RFP Documents; or
- 8.2.3 against any amount which the Licensing Authority becomes liable to pay or discharge to any Government Authority and/or third parties due to any default of the Concessionaire or any of its employees, contractors, sub-contractors or agents; or
- 8.2.4 against any payment/ fine made under the order/judgment of any court, tribunal or statutory authority or any Person working on their behalf; or
- 8.2.5 against any other amount including the License Fee that is due and payable to the Licensing Authority but has remained unpaid for 3 (three) months after such amount becoming due, under the terms of this CONCESSION AGREEMENT.
- 8.3 Upon Operationalization of the Hotel Premises, the Concessionaire shall submit to the Licensing Authority a Security Deposit within 1 (one) month after the operationalization of the Hotel Premises amounting to next 3 year's Minimum Benchmark Fee in the form of a Bank Guarantee (BG) with a validity of atleast 3 years from the date of submission. The format of BG for security deposit will be the same as that of Performance Guarantee. Upon receipt of Security Deposit, the Performance Guarantee of the Concessionaire will be returned by Licensing Authority.
- 8.4 During the term of this Agreement, it will be the responsibility of the Concessionaire to submit to Licensing Authority for the next 3 year's Security Deposit, a new Bank Guarantee or an extension of the previously submitted Guarantee with an amount equal to next 3 year's Minimum Benchmark Fee so that at the beginning of each year, the Security Deposit has atleast 3 years validity.

9. IMPLEMENTATION OF THE PROJECT

- 9.1 The Successful Bidder will take possession of the Hotel site from the Licensing Authority within 30 days of execution of **CONCESSION AGREEMENT**.
- 9.2 Once the Successful Bidder(s) is issued Letter of Award, the Bidder will be required to perform the following activities as per the timelines given herein from the date of issue of LOA: -

S. No	Parameter	Within Maximum Number of Days allowed
1.	Obtaining of the requisite statutory/non-statutory consents, approvals, clearances including Applicable Permits from the concerned agencies and Government Authorities including approval of external façade and traffic movement plan from Licensing Authority & Commencement of construction on the Land earmarked for the Hotel.	10 calendar months
2.	Commencement of construction	1 calendar Year
3.	Operationalization of the Hotel Premises (with minimum 150 rooms/suites).	5 calendar Years

In case of any delay in taking possession of the site by Concessionaire or delay in points 1, and 2 above, the Licensing Authority reserve a right to levy penalty at the rate of Rs 10 lakh per month of delay (this penalty is a genuine pre estimate of the damages which the Licensing Authority shall suffer in case the project is delayed) upto a maximum period of 24 months.

- 9.3 In case of any delay in the parameter 3 above, the Licensing Authority reserve a right to levy penalty at the rate of Rs 1 Cr per month of delay ((this penalty is a genuine pre estimate of the damages which the Licensing Authority shall suffer in case the project is delayed) upto a maximum period of 24 months
- 9.4 In case of delay of more than 24 months in any of the parameters above, the Licensing Authority shall be entitled to terminate the **CONCESSION AGREEMENT** and take charge and possession of the Hotel Premises and the site of the Project on “as is where is basis”, with forfeiture of all amounts (including upfront license fee and annual license fee) paid by the Concessionaire upto that point including performance guarantee and all rights of the Concessionaire with regard to the Hotel Premises, site, building, material, equipments etc. will stand cancelled with immediate effect and possession of the Hotel Premises will revert to the Licensing Authority with all rights of the Successful Bidder without any further act of the parties. After such termination, the Successful Bidder shall have no right or interest in respect of the Hotel Premises on any property thereon or any part thereof and Licensing Authority may, at its sole discretion re-tender the Hotel Premises or use it as per their internal policy/decision.
- 9.5 The Concessionaire shall ensure that Hotel Premises are Operationalized as per the terms and timelines set out in this **CONCESSION AGREEMENT**.
- 9.6 However, in the event of delay in achievement and completion of the Parameters set out above, beyond the control of the Concessionaire due to genuine reasons with recorded proof of documents submitted by the Concessionaire, the same will be examined by the Licensing Authority for extension of time and such extension may be granted at the sole and absolute discretion of the Licensing Authority.
- 9.7 This **CONCESSION AGREEMENT** has been executed exclusively for implementation of the Project and time is the essence of the contract. The Project implementation as per the Parameters and timelines mentioned above shall be adhered to scrupulously, upon completion of each Parameter as per the table above, the Concessionaire will be required to issue a letter to the Licensing Authority along with a copy of the relevant document/photographs confirming the completion of Parameter.

10. OCCUPATION OF HOTEL PREMISES; OWNERSHIP; PERMITTED USE; USAGE; ASSIGNMENT AND SUB-LEASE

- 10.1 **Handover of Possession:** Subject to the terms of this **CONCESSION AGREEMENT**, the Licensing Authority shall handover the possession of the Land earmarked for the Hotel within 30 (thirty) days from the Execution Date and the Concessionaire shall accept such possession with immediate effect along with the execution and delivery of a possession letter by the Parties (“**Possession Letter**”).
- 10.2 **Ownership of Hotel Premises** - The Hotel Premises along with the Land earmarked for the Hotel and any all construction, development, structures, additions, modifications and expansions at the Hotel Premises carried out by the Concessionaire complying with the Applicable Laws and the Master Plan shall, at all times be owned by the Licensing Authority and vest solely with the Licensing Authority, together with all installations of immovable nature such as electric sub-stations, the removal of which is likely to cause damage or deterioration in value of the Hotel Premises, and execution of this **CONCESSION AGREEMENT** shall in no manner be interpreted to mean any transfer or alienation of such ownership rights, interest or entitlements in any manner by the Licensing Authority to the Concessionaire. Upon completion of construction and development of the Hotel Premises in terms of the sanction building plans and other Applicable Permits, any re-construction or re-development on the Land earmarked for the Hotel during the Term, may only be permitted with the prior written consent of the Licensing Authority. Hotel premises ownership will vest with the Licensing Authority has been mentioned in the context that the hotel premises are on a license basis.
- 10.3 The Concessionaire is not permitted to further sub-lease/sub-license the Land earmarked

for the Hotel or the Hotel Premises or any part thereof. The Concessionaire may however, lease out commercial and/or retail space in the Hotel Premises as per norms of Ministry of Housing & Urban Affairs / Delhi Development Authority (DDA) only after Operationalization of the Hotel Premises within the parameters of this Concession Agreement and after due approvals from the Licensing Authority.

10.4 Permitted Use:

10.4.1 It is understood and agreed by the Concessionaire that, during the Term, the Hotel Premises shall be used, operated and occupied by the Concessionaire only for developing, completing operating, managing and maintaining the Hotel Premises, which is permissible as per Applicable Laws and Master Plan. Any use of the Hotel Premises in violation of Applicable Laws, the RFP Documents or this **CONCESSION AGREEMENT** shall constitute a default under this **CONCESSION AGREEMENT** and the Licensing Authority shall be entitled to terminate this **CONCESSION AGREEMENT** in case of such default. The Concessionaire expressly agrees and undertakes that the Hotel Premises shall be utilized exclusively for the purpose set forth in the RFP Documents including this Concession Agreement and that no change shall be made without the written sanction of the Licensing Authority.

10.4.2 The Concessionaire shall be in possession and shall use the Hotel Premises with due care and caution and shall, at its own costs and expense, develop, complete, maintain and keep maintained the Hotel Premises and the fixtures therein, in proper, clean and working condition at all times at par with good industry standards.

10.5 Development on the Land earmarked for the Hotel

10.5.1 The Concessionaire shall apply for and obtain and amend, modify and revise the layout plans and/or building plans in respect of the Land earmarked for the Hotel and the Project, as may be required from time to time, in accordance with, and as may be permissible under Applicable Law, Approvals and this **CONCESSION AGREEMENT**. The Concessionaire agrees that it shall not put up any structure or building other than the building comprised in the Project without the prior permission, in writing, from the Licensing Authority/Concerned Ministry(ies)/Government Authority.

10.5.2 The Concessionaire shall deal with all the concerned authorities including but not limited all municipal departments, revenue authorities, Government of National Capital Territory of Delhi and all its ministries and departments, Government of India and all its ministries and departments, concerned public/statutory authorities, private utilities, (including but not limited to Applicable Permits from municipal authorities, concerned police authorities, Airport Authority of India, Nation Monuments Authority, Archeological Survey of India, Delhi Pollution Control Board, Ministry of Environmental, Forests and Climate Change, Government of India) with respect to the development of the Hotel Premises and the execution of the Project and to apply for, deal with, appear before and obtain from the concerned authorities all such orders, certificates, permissions, extensions, modifications, clearances as may be necessary for the full, uninterrupted and exclusive development of the Hotel Premises and the Project and Operationalization of the Hotel Premises, at its own cost and expense. The Concessionaire shall carry out and comply with all the conditions contained in the Applicable Permits, as may be obtained from time to time and all Applicable Laws in relation to the development of the Hotel Premises and implementation of the Project.

10.5.3 The Concessionaire shall carry out all the infrastructural work including levelling of the Land earmarked for the Hotel, laying internal roads, street lights, water storage facilities, water mains, sewages, storm water drains, recreation gardens, boundary walls, electrical sub-stations and any other facilities/amenities, as per Applicable Law and as may be required for obtaining occupation certificate or any Applicable Permit or order of any Government Authority for development, completion and

- Operationalization of the Hotel Premises;
- 10.5.4 The Concessionaire shall, for the said purpose of the development of the Project, purchase building material including cement, steel and bricks etc. and do all acts, deeds, matters and things necessary or required in that behalf;
- 10.5.5 The Concessionaire shall employ and/or engage labour, workmen, personnel (skilled and unskilled) and to pay the wages, remuneration and salary of such workmen and shall comply with all Applicable Laws, from time to time, in force and taking out the requisite insurance policies and workmen's insurance;
- 10.5.6 The Concessionaire shall appoint architects, contractors, lawyers, auditors and other professionals and consultants for the development, completion and operationalization of the Hotel Premises.
- 10.5.7 Upon execution of this **CONCESSION AGREEMENT** and subject to the terms of the RFP Documents and this **CONCESSION AGREEMENT**, the Concessionaire shall solely be responsible and liable for the entire development, construction completion and Operationalization of the Hotel Premises, including but not limited to conceptualizing, planning, engineering, procurement, coordination of the Project. The Concessionaire shall, from the date of issuance of the relevant Applicable Permits, be obligated to develop the Hotel Premises and implement the said Project by undertaking construction and development as per the Applicable Law, Approvals and in the manner set out in this **CONCESSION AGREEMENT**;
- 10.5.8 The Concessionaire will ensure that the external façade of the Hotel Premises and traffic movement plan within the Land earmarked for the Hotel are in sync with that of IECC being developed at Pragati Maidan by the Licensing Authority. To this end, the Concessionaire will be required to provide detailed design specifications of the external façade of the Hotel Premises and traffic movement plan to Licensing Authority on or within 60 (sixty) days from date of signing of **CONCESSION AGREEMENT**. The Licensing Authority will provide approval on the design submitted within 15 (fifteen) days, provided that the façade and traffic movement plan are in line with IECC being developed by the Licensing Authority, otherwise the Licensing Authority may request the Concessionaire to revise the façade design as per design specification of the IECC and the Concessionaire shall be obligated to revise such designs to the satisfaction of the Licensing Authority. The Concessionaire and its architect may meet with the Licensing Authority or the consulting architect of the IECC before submitting the final design for approval so as to get inputs for the façade design and traffic movement plan.
- 10.5.9 The Concessionaire will allow construction of or construct a tunnel connecting the Hotel Premises parking to the basement parking of the IECC being developed by the Licensing Authority. The Concessionaire shall also bear the cost/ expenditure incurred on construction of this tunnel which is estimated to be in the range of Rs.20-22 crores. Once constructed, the upkeep of the tunnel including placement and maintenance of lights and ventilation system will be the responsibility of the Concessionaire and the maintenance shall also include providing round the clock electricity and all other applicable charges.
- 10.5.10 The Concessionaire will ensure that the Hotel Premises shall have premium suites and rooms so as to also cater to the requirements of international and summit level conferences and shall adhere to the tenets of the Code of Conduct for Safe & Honorable Tourism as detailed by Ministry of Tourism, Government of India on their official website <http://www.tourism.gov.in>. This will include but will not be limited to, design of the Hotel Premises in manner that it meets with the security requirement spelt out by concerned security agencies.
- 10.5.11 The Concessionaire shall not make or permit any alterations or additions to the approved buildings in the Hotel Premises including digging any open wells/sinking a bore well or excavating sub-soil for any other purpose, without obtaining the previous consent, in writing, of the Licensing Authority and shall not cause any harm

to the walls and fittings in the Hotel Premises.

10.5.12 Licensing Authority on behalf of ITPO will allow to the Concessionaire to use IECC project's basement and stack parking on a Cost sharing basis.

10.5.13 The Concessionaire shall ensure usage of such design and modern technology which would enable faster construction of the Hotel Premises.

10.5.14 The Concessionaire will ensure that the construction work at the hotel site would be carried out in a manner that the construction activity is not visible from the outside and will not cause any dust and noise whatsoever for the events, conferences and activities happening at Pragati Maidan.

10.5.15 Any valuable stone/ valuable objects of national/ archeological importance, if found under earth while digging/ excavations done for the purpose of the constructions of the hotel premises on the land earmarked for hotel, shall be the property/ asset of the Licensing Authority. Such findings shall be reported/ intimated to the Licensing Authority within 24 hours of such excavations.

10.6 Assignment/ Sub-letting/ Mortgage, etc.

10.6.1 Subject to clauses herein, the Concessionaire shall not directly or indirectly transfer, assign, sell, mortgage, pledge, assign, hypothecate, encumber or part with Hotel Premises or any part thereof and/or the benefits arising out of this **CONCESSION AGREEMENT** or any part thereof, or sublet, underlet or part with the possession of the Hotel Premises or any part thereof without obtaining prior written approval from Licensing Authority at any time during the Term. It shall be open to the Licensing Authority to grant or refuse approval or impose any conditions, if considered necessary and desirable. Permission to any third party to operate permissible activities such as offices, retail areas, gymnasium, spa, restaurants, coffee shops, banquet halls, or any other facilities within the Hotel Premises, shall be given by the Concessionaire in compliance with Applicable Law and shall be expressly subject to the terms and conditions of this **CONCESSION AGREEMENT** and the RFP Documents. Any permission to third parties to operate or maintain the aforesaid facilities shall be co-terminus with or, less than the Term and upon expiry of the Term or, early termination of this **CONCESSION AGREEMENT** by the Licensing Authority. All permissions granted to third parties to operate or maintain any facility or amenities within the Hotel Premises as aforesaid shall automatically cease and terminate forthwith and the Concessionaire shall be obliged to handover vacant and peaceful possession of the Hotel Premises to the Licensing Authority in terms of this **CONCESSION AGREEMENT**. The Concessionaire shall provide a copy of all such agreements executed with third parties to the Licensing Authority within 7 (seven) days of execution of such third-party agreement(s).

10.7 Project Finance

10.7.1 The Concessionaire is not allowed to hypothecate, create charge, or create mortgage or other encumbrances for any purpose excluding raising funds for the Project subject to the clause below.

10.7.2 It is hereby clarified that the Concessionaire has been provided the right to mortgage the land of 3.70 acres for availing institutional loan only for the explicit purpose of construction of 5-star hotel at this site, subject to the NOC being obtained by them from the Licensing Authority. The Licensing Authority will take adequate safeguards to ensure continued ownership/leasehold of the site without any encumbrances before issuance of such NOC. The Concessionaire irrevocably will not have any right or remedy which they may have at any stage at law or howsoever otherwise arising to challenge or question the decision taken by the Licensing Authority in this context

11. RIGHTS OF THE LICENSING AUTHORITY

11.1 The Licensing Authority shall at all times, be deemed to be in the ownership of the Hotel Premises, and the Licensing Authority or ITPO on behalf of the Licensing Authority, its officers,

employees, representatives and agents shall, throughout the Term, have the right:

- 11.1.1 to enter upon the Hotel Premises at any time in the case of an emergency;
- 11.1.2 upon giving a prior notice of 48 (forty eight) hours, and at the cost of the Concessionaire, to enter upon and inspect, (i) the Hotel Premises; (ii) the services provided at the Hotel Premises; (iii) the fixtures installed at the Hotel Premises; and (iv) the offices of the Concessionaire at the Hotel Premises;
- 11.1.3 To inspect and seek copies of:
 - 11.1.3.1 all Applicable Permits obtained by the Concessionaire in relation to: (a) construction, development, completion, occupation and use of the Hotel Premises; (b) the operation and management of the Hotel Premises; and (c) ensuring compliance by the Concessionaire of all Applicable Laws;
 - 11.1.3.2 the books of accounts, files, voucher books, documents maintained by the Concessionaire in relation to the Hotel Premises; and
 - 11.1.3.3 such other information and documents as may be deemed necessary or relevant by the Licensing Authority.
- 11.1.4 The Licensing Authority may at any time, in its sole discretion, seek any clarifications and/or any additional information in writing from the Concessionaire, which may be required by the Licensing Authority to verify all statements, information and documents submitted by the Concessionaire pursuant to the RFP Documents. The Concessionaire shall, when so required by the Licensing Authority, as soon as reasonably possible but in any case within 7 (seven) days of receipt of such request from the Licensing Authority unless a longer time period is specified by the Licensing Authority, make available in writing at its own cost and expense, all such information, evidence and documents as may be required by the Licensing Authority for such verification.

12. LICENSING AUTHORITY'S COVENANTS

- 12.1 Subject to compliance by the Concessionaire of the terms of this **CONCESSION AGREEMENT** and the RFP Documents, the Licensing Authority covenants to the Concessionaire as follows:
 - 12.1.1 The Licensing Authority shall execute the Possession Letter and handover possession of the Hotel Premises, free from all Encumbrances, to the Concessionaire within 30 (thirty) days of the Execution Date and the Concessionaire shall sign the said Possession Letter and accept possession of the Hotel Premises from such date;
 - 12.1.2 The Licensing Authority shall 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 Hotel Premises that pertain to the period prior to the Execution Date;
 - 12.1.3 After the Execution Date, the Licensing Authority shall provide reasonable cooperation to the Concessionaire in obtaining Applicable Permits that may need to be issued in the name of the Licensing Authority or, otherwise;
 - 12.1.4 The Licensing Authority shall perform its other obligations under this **CONCESSION AGREEMENT** in accordance with Applicable Laws.

13. CONCESSIONAIRE'S COVENANTS AND UNDERTAKINGS

- 13.1 The Concessionaire acknowledges that during the Term it shall be bound to act in a manner consistent with its status as the Concessionaire and it shall also specifically be bound by covenants as stated hereinafter:
 - 13.1.1 The Concessionaire shall be responsible to procure at its own cost, risk and expense and in a timely manner, and secure and maintain the same in full force and effect, all Applicable Permits required in relation to:

- 13.1.1.1 construction, development, completion, use and occupation of the Hotel Premises;
 - 13.1.1.2 the operation and management of the Hotel Premises;
 - 13.1.1.3 undertake other permitted activities within the Hotel Premises as per the terms of this **CONCESSION AGREEMENT**;
- 13.1.2 The Concessionaire shall submit to the Licensing Authority during the entire License Period, on an annual basis, within a period of 15 (fifteen) days of the date on which the audited accounts of the Concessionaire are approved and adopted at the annual general meeting of the shareholders of the Concessionaire,
- 13.1.2.1 copies of all Applicable Permits applied for and sought by it during the immediately preceding Financial Year;
 - 13.1.2.2 certified true copy of its audited accounts and financial statements for the immediately preceding Financial Year;
 - 13.1.2.3 copy of insurance policies maintained by the Concessionaire and premium receipts thereof; and
 - 13.1.2.4 a certificate issued by the authorized signatory of the Concessionaire certifying compliance of all Applicable Laws in the Hotel Premises in the form and manner as may be required by the Licensing Authority.
- 13.1.3 The Concessionaire shall send to the Licensing Authority by letter or email, a report stating accidents and unusual occurrences if any at the Hotel Premises **during the term of this Concession Agreement**. An annual summary of such reports shall also be sent within 15 (fifteen) days of the closing of each Financial Year. For the purposes of this Clause, 'accidents and unusual occurrences' at the Hotel Premises shall include:
- 13.1.3.1 death or injury to any person;
 - 13.1.3.2 damaged or dislodged fixed equipment;
 - 13.1.3.3 any obstruction on the Land earmarked for the Hotel, which results in slowdown of the implementation of the Project;
 - 13.1.3.4 disablement of any equipment during operation;
 - 13.1.3.5 communication failure affecting the operation of the Project;
 - 13.1.3.6 smoke or fire;
 - 13.1.3.7 flooding of Project; and
 - 13.1.3.8 such other relevant information as may be required by the Licensing Authority, from time to time.
- 13.1.4 The Concessionaire shall submit to the Licensing Authority, within a period of 7 (seven) days from the date a request is made by the Licensing Authority, all such information and documents as is reasonably requested by the Licensing Authority.
- 13.1.5 The Concessionaire shall carry out construction and development of the Hotel Premises at the Land earmarked for the Hotel, at its own risk, cost and expense.
- 13.1.6 The Concessionaire shall maintain a round-the-clock vigil over the construction site at the Land earmarked for the Hotel and shall ensure and procure that no encroachment thereon takes place, and in the event that there is any encroachment or unauthorized occupation or trespass on the Land earmarked for the Hotel or any part thereof, the Concessionaire shall report such encroachment or unauthorized occupation or trespass forthwith to the Licensing Authority and undertake its removal at its own cost and expense and shall keep the Licensing Authority indemnified in this regard.
- 13.1.7 The Concessionaire shall not transfer, dispose off, let, lease, license, sub-license or otherwise alienate the Hotel Premises or any part thereof. The Concessionaire shall not do or permit to be done any act whereby the Licensing Authority's right, title, interest or entitlement in or upon Hotel Premises, in any way prejudicially affected, impaired or extinguished. Further, the Concessionaire shall not create or allow to subsist any Encumbrance on the Hotel Premises.

- 13.1.8 The Concessionaire shall not use the Hotel Premises for any illegal or unlawful purposes and shall not use, permit or suffer upon the Hotel Premises or any part thereof anything which may become a nuisance or annoyance or cause damage to the Hotel Premises or to the guest staying at or visiting the Hotel Premises. The Concessionaire shall not store at the Hotel Premises, any hazardous, inflammable material or material not permitted to be stored under Applicable Laws.
- 13.1.9 The Concessionaire shall, on and from the Execution Date and for the entire Term, keep the Hotel Premises and every part thereof, in good order, condition, and repair. The Licensing Authority shall not be responsible to carry out any construction or development at Land earmarked for the Hotel, make any improvements or carry out any changes of any kind whatsoever at the Hotel Premises and the Concessionaire shall solely be responsible for all works required to be carried out at the Hotel Premises, at its own cost, expenses, risk and liability.
- 13.1.10 The Concessionaire shall carry out any and all works including repairs required to be carried out at the Hotel Premises due to damage caused to the Hotel Premises or any part thereof due to any fire or casualty and restore all such portions of and equip them with such fittings, fixtures and equipment as are necessary or proper.
- 13.1.11 The Concessionaire shall, at all times during the Term, insure and keep insured, the Hotel Premises, the fittings, fixtures, equipment and furniture therein and the goods/stock in the Hotel Premises, from any and all risks and keep such insurance policies valid and subsisting during the entire Term including third party insurance, as set out in Clause 16.1 below. All such insurance shall be from a reputed insurance company.
- 13.1.12 The Concessionaire shall, at all times during the Term, ensure that the Hotel Premises and the Land earmarked for the Hotel remain free from all encroachments and shall take all steps necessary to remove encroachments, if any during the Term. Upon expiry of the Term, the Hotel Premises shall be handed over by the Concessionaire to the Licensing Authority free from all encroachments and Encumbrances. The Concessionaire shall not permit any lease/license by action or inaction in the Hotel or permit the Hotel Premises to be used in such a way as to cause nuisance or annoyance or inconvenience to the occupiers of the area surrounding IECC or Pragati Maidan, Delhi.
- 13.1.13 The Concessionaire shall arrange and access at its own cost, expense, risk and liability, all infrastructural facilities like water, power and technology, goods, materials, consumables, things and services etc. as may be necessary or required by it at the Hotel Premises for the Project and make arrangements and back-up arrangements of the same. The Licensing Authority is neither required to nor shall be obligated to provide any facilities to the Concessionaire at the Hotel Premises other than specifically set out in this **CONCESSION AGREEMENT**.
- 13.1.14 The Concessionaire shall be solely responsible to the Licensing Authority for observance of all provisions of this **CONCESSION AGREEMENT** and compliance with all Applicable Laws and Master Plan, by itself, its employees, agents, permitted users/occupants, contractors and representatives and their employees and any other Person acting for or under or on behalf of any of the above-mentioned, as fully as if they were the acts or defaults of the Concessionaire alone. The Concessionaire shall 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 **CONCESSION AGREEMENT**, Applicable Permits or Applicable Law.
- 13.1.15 The Concessionaire shall observe, perform and abide by or otherwise comply with Applicable Laws in so far as the same are applicable to the Concessionaire, including without limitation provisions of, the Food Safety and Standards Act, 2006, all Applicable Laws in relation to food, fire safety and environment, in each case including the rules and regulation made there under, and the provisions laid down under any other Applicable Law, in respect of the manner and method of running a

hotel of suitable rating.

- 13.1.16 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold the Licensing Authority, harmless and indemnified, from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of or in relation to the failure or non-compliance with the terms of this **CONCESSION AGREEMENT**, the RFP Documents, Applicable Law, Applicable Permits and the discharge of its obligations under this **CONCESSION AGREEMENT** or Applicable Laws or Applicable Permits.
- 13.1.17 Once the Hotel Premises is Operationalized, the Concessionaire shall submit to the Licensing Authority at the end of each Financial Year within a period of 3 (three) months of the end of the relevant Financial Year, electricity bill(s), water bill(s) and income tax return certified by the statutory auditor and any other documents as deemed fit by the Licensing Authority to confirm that the Hotel Premises is operational. In case the Concessionaire is unable to submit such documents for 3 (three) consecutive years for any reason whatsoever, the Licensing Authority has the right to terminate this **CONCESSION AGREEMENT**, without giving any notice period of reason for termination thereof to the Concessionaire. Upon termination the Hotel Premises, including but not limited to building, moveable and immovable property will pass on to the Licensing Authority without any rights of the Concessionaire remaining in any manner. At this stage all the officers, employees, agents, guests of the Concessionaire will be required to vacate the Hotel Premises with immediate effect.
- 13.1.18 The Concessionaire shall regularly and punctually pay, without any delay, protest, demur or cavil;
- a) To the Licensing Authority, the License Fee and any other payments, charges, and outgoings payable in accordance with this **CONCESSION AGREEMENT**;
 - b) all Taxes relating to the Hotel Premises, on or before the due date of making such payments as set out in this **CONCESSION AGREEMENT** or as provided under Applicable Laws;
 - c) all other charges and outgoings, including utility charges relating to the Hotel Premises, on or before the due date of making such payments as set out in this **CONCESSION AGREEMENT** or as provided under Applicable Laws; and
 - d) all other amounts required to be paid by it to relevant Government Authorities in relation to construction, development, completion, operation and management of the Hotel Premises including fee/ renewal fee and charges towards applying for and maintaining the Applicable Permits for the Hotel Premises and services/ facilities provided/ to be provided at the Hotel Premises.
- 13.1.19 All payments to be made by the Concessionaire to the Licensing Authority under or in relation to this **CONCESSION AGREEMENT** or the RFP Documents shall only be made through RTGS/ NEFT/ IMPS into the bank account of the Licensing Authority.
- 13.1.20 The Concessionaire shall ensure that the Hotel Premises has the required provisions for fire/ smoke detection, fire safety and all other firefighting arrangements/emergency exits as may be prescribed under Applicable Law, Applicable Permits and any other code/ standard practice or by any Government Authority in this behalf.
- 13.1.21 The Concessionaire shall be responsible to keep the Hotel Premises and the entire area forming part of it together with its fixtures and other installations including the air conditioning plant, lifts, electrical installations, boilers, gas installations and other assets, in a safe, sound and working condition. The Concessionaire shall also be responsible to carry out effective maintenance and repairs, annual or special, as

may be required from time to time, including operation of all services at its own cost, including maintenance, repairing and replacement of fixtures, fittings and equipment.

- 13.1.22 The Concessionaire shall be further responsible for the maintenance of lawns and open spaces in good condition, at its own cost.
- 13.1.23 The Concessionaire shall employ throughout the Term, qualified staff to manage and operate the Hotel Premises totally at its own costs and liabilities.
- 13.1.24 The Concessionaire shall maintain harmony and good industrial relations among the personnel, labour, vendors, contractors, sub-contractors, engaged or employed in connection with the performance of its obligations under this **CONCESSION AGREEMENT** and shall be solely responsible for compliance with all labour laws and liable for all possible claims and employment related liabilities of the staff employed in by the Concessionaire or its vendors, contractors or sub-contractors in relation with the construction, development, completion, operation and management of the Hotel Premises, during the term of this Concession Agreement and that in no case and for no purposes whatsoever, shall the Licensing Authority be treated as the employer in this regard. The Concessionaire hereby agrees to indemnify and keep and hold the Licensing Authority, harmless and indemnified against any and all claims, damages, expenses or losses incurred or caused to be incurred or suffered by them in this regard;
- 13.1.25 The Concessionaire shall handover the actual, vacant and peaceful occupation of the Hotel Premises to the Licensing Authority, free and clear from all Encumbrances and encroachments, and in fully operational and functional condition, upon the expiry of the Term or upon early termination of this **CONCESSION AGREEMENT**, in accordance with the provisions hereof.
- 13.1.26 The Concessionaire shall receive and deliver goods and material required by it at the Hotel Premises only at the areas designated for it. It shall keep and maintain the Hotel Premises in a neat manner and ensure that all trash, refuse, and the like, are kept in covered bins/ cans, to ensure hygiene and cleanliness of the Hotel Premises, compliances of applicable laws in respect of waste management & disposal at all times, during the Term.
- 13.1.27 The Concessionaire shall make its own arrangements for daily disposal of all waste generated out of the Hotel Premises at the waste disposal sites approved by the concerned Government Departments/ Authority and in accordance with Applicable Laws. Disposal of waste on or around non-approved sites or in violation of Applicable Law shall make the Concessionaire liable to fines/penalties prescribed in the Applicable Laws. The garbage disposal system would be in conformity with the latest standards and norms.
- 13.1.28 The Concessionaire shall obtain and maintain requisite health license from the concerned Government Departments/ Authority for preparation of food articles within the Hotel Premises, and dish washing will be done only in the kitchen area and nowhere else. The Concessionaire shall not employ or permit to be employed any minor or, allow into the Hotel Premises any Person suffering from any contagious or infectious disease or epidemic.
- 13.1.29 It shall maintain environmental hygiene and proper sanitation of the Hotel Premises including water closet, toilet etc. at all times during the Term.
- 13.1.30 It shall undertake day to day maintenance, watch and ward, sanitation of Hotel Premises including routine and periodical maintenance of electrical and other installations and engage adequate number of trained personnel for the same.
- 13.1.31 The Concessionaire shall obtain electric and water connections and would get the load for light and power sanctioned in its name after completing all formalities like deposits of the new connections, fee etc. and shall bear the electric and water consumption charges on its own. The Concessionaire shall not exceed the sanctioned electric load and if any additional load is required by the Concessionaire

- over and above that what is installed, the same shall be at the Concessionaire's cost.
- 13.1.32 The Concessionaire shall comply with and abide by any other conditions as may be imposed by the Licensing Authority at any time during the Term.
- 13.1.33 The Concessionaire shall comply with all the labour laws, welfare legislations, including the maternity benefits act etc.

14. ADDITIONAL FAR

- 14.1 The Concessionaire hereby agrees that a total Floor Area Ratio ("**FAR**") of 3.75 and ground coverage of %60 (sixty per cent.) is allotted to the Concessionaire by the Licensing Authority in respect of the Land earmarked for the Hotel. In the event that the FAR or ground coverage of this Land earmarked for the Hotel stands increased for any reason whatsoever, the Licensing Authority shall have the sole right with respect to the increased FAR and the Concessionaire will claim no right or benefit there from.

15. CHANGE IN CONTROL

- 15.1 The Concessionaire shall not allow or register any change in its shareholding which results in a change of Control at any time during the Term without prior written approval of the Licensing Authority. Any such change in Control shall only be permitted if the transferee entity meets the eligibility conditions under the RFP Documents, no concession whatsoever shall be permitted on the question of eligibility conditions .
- 15.2 Subject to Clause above, the Concessionaire, whether a special purpose company or an already existing company, may, until the expiry of 1 (one) year from the Operationalization of the Hotel Premises change its shareholding with the prior written consent of the Licensing Authority, and after the expiry of 1 (one) year from the Operationalization of the Hotel Premises, such change in shareholding of the Concessionaire shall be permitted without prior consent of the Licensing Authority. It is however clarified that the Concessionaire Company shall continue to remain the Concessionaire under this **CONCESSION AGREEMENT** irrespective of any such change in shareholding of the Concessionaire.

16. REPRESENTATIONS AND WARRANTIES

- 16.1 Licensing Authority's **Representations and Warranties**: The Licensing Authority hereby represents and warrants the following as on the date of execution of this **CONCESSION AGREEMENT**:
- 16.1.1 That the Licensing Authority has the power and authority to execute this **CONCESSION AGREEMENT** and grant the license of the Land earmarked for Hotel to the Concessionaire in accordance with the terms of this **CONCESSION AGREEMENT**.
- 16.1.2 That the Land earmarked for Hotel is free from all Encumbrances and any claim or legal action of any nature whatsoever.
- 16.2 **Concessionaire's Representations and Warranties**: The Concessionaire hereby represents and warrants to the Licensing Authority, as on the date of this **CONCESSION AGREEMENT**, which representation and warranty shall continue on each day for the entire Term as if made on each such day of the Term that:
- 16.2.1 The Concessionaire is an entity duly organized and validly existing in accordance with the Applicable Laws of India, has full power and authority to (i) enter into this **CONCESSION AGREEMENT**; (ii) implement the Project; (iii) undertake the operation and management of the Hotel Premises and all related, ancillary and incidental activities; (iv) do all things necessary or appropriate in respect of the Hotel Premises; (v) execute, deliver, consummate the transactions and perform its obligations contemplated under this **CONCESSION AGREEMENT** and the other documents, to which it is a party; and (vi) the execution and delivery of this **CONCESSION AGREEMENT** by the Concessionaire and its compliance with or performance of the terms and provisions of this **CONCESSION AGREEMENT** does

- not and will not (a) contravene provisions of any Applicable Laws or agreement or document to which the Concessionaire is a party; (b) conflict with or result in any breach of any of the terms and conditions of, or constitute a potential event of default or event of default (howsoever such term is defined or described) under any deed, agreement, contract, instrument or arrangement to which it is a party or to which it may be subject; (c) result in the creation or imposition of any security interest over any present or future assets in favor of any third party; or (d) violate any provisions of its memorandum of association and articles of association.
- 16.2.2 There are no actions, suits, proceedings, or investigations pending or to the best of its knowledge threatened against the Concessionaire at law or in equity before any court or before any other judicial, quasi-judicial or other authority, which may disrupt or interfere with the Concessionaire's possession of the Land earmarked for Hotel and the Hotel Premises; implementation of the Project by the Concessionaire; or prohibit the Concessionaire from performing its obligations under this **CONCESSION AGREEMENT**. The Concessionaire has no knowledge of any violation or default with respect to any other writ, judgment or any decree of any court or any legally binding order, including that of attachment, of any Government Authority, which may disrupt or interfere with the Concessionaire's possession of the Land earmarked for hotel and the Hotel Premises; implementation of the Project by the Concessionaire; or prohibit the Concessionaire from performing its obligations under this **CONCESSION AGREEMENT**.
- 16.2.3 The Concessionaire has all the necessary corporate as well as statutory approvals, permissions and other actions (i) to authorize the execution, delivery and performance by it of this **CONCESSION AGREEMENT** each of such actions is in full force and effect; and (ii) for carrying out its operation including in New Delhi.
- 16.2.4 The Concessionaire is validly existing and no receiver, manager or administrative receiver has been appointed or to the best of the knowledge of the Concessionaire is likely to be appointed in respect of any part of the undertaking or property of the Concessionaire and that no resolution has been passed or proposed to be passed and that no petition has been presented for the winding-up of the Concessionaire.
- 16.2.5 The obligations expressed to be assumed by it in this **CONCESSION AGREEMENT** constitute its legal, valid, binding and enforceable obligations enforceable in accordance with its terms. This **CONCESSION AGREEMENT** is admissible in evidence and in proper form for enforcement in all appropriate jurisdictions.
- 16.2.6 The Concessionaire will use the Land earmarked for hotel and the Hotel Premises only for the use permitted in accordance with the provisions of this **CONCESSION AGREEMENT**.
- 16.2.7 The Concessionaire has completed its due diligence in respect of the Land earmarked for the Hotel and is satisfied with the title of the Licensing Authority. Licensing authority on behalf of ITPO has the authority to monetize 3.70 Acres of land for the hotel.
- 16.2.8 The Concessionaire has inspected the Hotel Premises and has satisfied itself in all respects in relation thereto including as to the area, FAR, location, and state thereof.
- 16.2.9 The Concessionaire has not dealt with any broker or agent in connection with the consummation of this **CONCESSION AGREEMENT** and has not paid any bribes, amounts, brokerage, whether in cash or otherwise, to any Person including any officer or employee of the Licensing Authority or ITPO, to seek the license granted hereunder.
- 16.2.10 The Concessionaire is in compliance in all respects with all Applicable Laws and Applicable Permits including those which are necessary or desirable in respect of the conduct of its business, the ownership of assets, in relation to the Hotel Premises or for the construction, development, completion, operation and management of the Hotel Premises.

16.2.11 All acts, conditions and things required to be done, fulfilled or performed, and that are necessary or desirable for (a) the due execution, entry, delivery of, performance by it of its obligations, and for the exercise of its rights under this **CONCESSION AGREEMENT**; (b) ensuring the legality, validity, binding effect or enforceability and admissibility in evidence of this **CONCESSION AGREEMENT**, in all relevant jurisdictions,

16.2.11.1 have been duly done, fulfilled, effected, obtained and performed or will be; and

16.2.11.2 are in full force and effect.

16.2.12 The Concessionaire and its respective officers, employees, Directors, representatives, contractors, agents and advisers shall observe the highest standard of ethics during the entire Term.

16.2.13 Neither the Concessionaire has nor any of its shareholders and their respective officers, employees, Directors, representatives, contractors, agents and advisers, directly or indirectly, or through any other Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the bidding process for the allotment and license of the Land earmarked for the Hotel, the issuance of the Letter of Award or the execution of this **CONCESSION AGREEMENT**.

16.2.14 The Concessionaire shall pay all stamp duty and registration charges and related fees, costs, charges and expenses in respect of this **CONCESSION AGREEMENT** and any other document pertaining to the license or any other charges by whatever name called and to whomsoever payable in connection with or otherwise relating to the grant of the license of the Land earmarked for the Hotel.

16.2.15 All information provided by the Concessionaire to the Licensing Authority till date is true, complete and accurate in all respects and is not misleading in any respect. Nothing has occurred or been omitted and no information has been given or withheld that results in the information provided to the Licensing Authority being untrue or misleading in any respect. The Concessionaire holds indemnified the Licensing Authority against all losses, including the loss of goodwill and reputation, which the Licensing Authority may suffer due to acts and omissions on the part of the Concessionaire and it furnishing any incorrect or incomplete information.

16.2.16 The Concessionaire has conducted its own independent assessment of the accuracy and completeness of all information relating to the Land earmarked for the Hotel and the Licensing Authority shall not be responsible in any manner whatsoever in relation to the same.

17. FRAUD AND CORRUPT PRACTICES

17.1 The Concessionaire and its respective officers, employees, Directors, representatives, contractors, agents and advisers shall observe the highest standard of ethics during the entire Term. Notwithstanding anything to the contrary contained herein or in the Letter of Award or the RFP Documents, the Licensing Authority may, at any time, withdraw the Letter of Award and terminate this **CONCESSION AGREEMENT**, without being liable in any manner whatsoever to the Concessionaire, if the Licensing Authority determines that the Concessionaire has, directly or indirectly, or through any Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the bidding process under the RFP, the issuance of the Letter of Award or the execution of this **CONCESSION AGREEMENT**. If the Licensing Authority determines that the Concessionaire or any of its respective officers, employees, Directors, representatives, contractors, agents and advisers, as the case may be, has, directly or indirectly, or through any of other Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the bidding process under the RFP, in

the issuance of the Letter of Award or the execution of this **CONCESSION AGREEMENT**, then the Licensing Authority shall be entitled to forfeit and appropriate the Premium and the Performance Guarantee (if applicable at such time), as damages, and forthwith terminate this **CONCESSION AGREEMENT**, without prejudice to any other right or remedy that may be available to it under the RFP Documents and this **CONCESSION AGREEMENT** or under Applicable Law or otherwise.

18. INSURANCE

- 18.1 Within 30 (thirty) days after the Execution Date, the Concessionaire shall furnish to the Licensing Authority, with certificates of insurance evidencing that the requirements set forth herein are in full force and effect. The Concessionaire shall provide Licensing Authority written intimation/information of loss or damage to property within 24 (twenty-four) hours after such loss or damage occurs. The limit of any insurance which the Concessionaire is required to provide pursuant to this Clause shall not limit the liability of the Concessionaire hereunder.
- 18.2 All policies taken by the Concessionaire shall be taken from reputed insurance companies, acceptable to the Licensing Authority.
- 18.3 The Concessionaire shall, at its own cost and expense, obtain and keep in force, during the entire Term, a policy of comprehensive general liability insurance with broad form endorsement, including for the construction on the Land earmarked for the Hotel, personal injury liability, contractual liability, products and completed operations liability and liquor liability (if applicable), insuring the Licensing Authority and the Concessionaire against any liability arising out of the construction, development, completion, use, occupancy or maintenance of the Hotel Premises. The insurance cover would be obtained against all insurable risks, which will, *inter alia*, include builder's "all risk" (including third party liability), fire, theft, damage and natural calamities, riots, civil commotion, war risks and all other "force majeure" risks and in addition to the normal insurance cover, will cover the standing charges and loss of profit in the event of any stoppage of business for any reason.
- 18.4 The Concessionaire shall maintain in full force and effect on all fixtures, fittings, furniture, machinery and equipment, stock and inventory, improvements and betterments, a policy of all risk/special form property insurance and covering the full replacement value of such property in an amount adequate to avoid co-insurance. During the Term, proceeds from any such policy of insurance shall be used for the repair and/or replacement of the fixtures, fittings, furniture, equipment and other property so insured. In case of failure by the Concessionaire, The Concessionaire shall permit the Licensing Authority or its agents or officers with or without workmen at all reasonable times to enter upon the Hotel Premises to view the conditions thereof upon notice given by the Licensing Authority to effect repairs at the cost of the Concessionaire.
- 18.5 The Concessionaire shall ensure that all the insurance policies are obtained by the Concessionaire in relation to the Hotel Premises and it shall within 7 (seven) days of obtaining the insurance referred to in this Clause, provide a certified true copy of it to the Licensing Authority for its records and information.

19. FORCE MAJEURE

- 19.1 As used in this **CONCESSION AGREEMENT**, the expression "Force Majeure" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence of any or all the below set events, if (a) it affects the ability of the Party (the "Affected Party") to perform its obligations under this **CONCESSION AGREEMENT** (additionally, in the case of the Concessionaire, if the Concessionaire is unable to construct, develop or operate all or a substantial part of the Hotel Premises), (b) is beyond the reasonable control of the Affected Party, and (c) the Affected Party could not have prevented or overcome by exercise of due diligence and following good industry practice:
- 19.1.1 act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination

- or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Hotel Premises);
- 19.1.2 compulsory acquisition in public interest or expropriation of the Land earmarked for the Hotel or Hotel Premises or rights of the Concessionaire;
- 19.1.3 an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, riot, insurrection, terrorist or military action, or
- 19.1.4 any event or circumstances of a nature analogous to any of the foregoing.
- 19.1.5 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
1. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Clause with evidence in support thereof;
 2. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this **CONCESSION AGREEMENT**;
 3. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 4. any other information relevant to the Affected Party's claim.
- 19.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 2 (two) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this **CONCESSION AGREEMENT**. For avoidance of any doubt, the giving of a notice of Force Majeure by any Party to the other Party shall not automatically constitute Force Majeure.
- 19.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (at least weekly) reports containing information as reasonably requested by the other Party.
- 19.4 If any Force Majeure Event occurs after the Execution Date, whereupon the Concessionaire is unable to perform its obligations under this **CONCESSION AGREEMENT** for an aggregate period exceeding 60 (sixty) days in a Financial Year during the subsistence of each such Force Majeure Event, the Term shall be extended by a period, equal in length to the period during which the Concessionaire was unable to perform its obligations due to such Force Majeure Event.
- 19.5 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.
- 19.6 Save and except as expressly provided in this Clause, 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 arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.
- 19.7 If a Force Majeure Event subsists for a continuous period of 180 (one hundred eighty) days or more, either Party may in its discretion terminate this **CONCESSION AGREEMENT** by issuing a termination notice to the other Party without being liable in any manner whatsoever for, and upon issue of such termination notice, this **CONCESSION AGREEMENT** 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.
- 19.8 If the Affected Party is rendered wholly or partially unable to perform its obligations under this **CONCESSION AGREEMENT** because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:
- 18.8.1 the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

- 18.8.2 the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- 18.8.3 when the Affected Party is able to resume performance of its obligations under this **CONCESSION AGREEMENT**, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

20. EVENTS OF DEFAULT

- 20.1 Any one of the following shall be deemed to be a “**Concessionaire Event of Default**” unless the default has occurred as a result of a Force Majeure Event:
- 20.1.1 Breach of any of the terms of the RFP Document by the Concessionaire;
- 20.1.2 Failure on the part of the Concessionaire to make payment of License Fee or other charges payable to the Licensing Authority within 7 (seven) days from the date it is due and payable;
- 20.1.3 Failure of the Concessionaire to comply with the timelines for the development related Parameters as set out in this agreement;
- 20.1.4 Any use of the Hotel Premises in violation of Applicable Laws, the RFP Documents or this **CONCESSION AGREEMENT** as set out in Clause 8.4(a);
- 20.1.5 Failure of the Concessionaire to provide the electricity bill(s), water bill(s) and income tax return certified by the statutory auditor and any other documents as deemed fit by the Licensing Authority to confirm that the Hotel Premises is operational at the end of each Financial Year within a period of 3 (three) month of the end of the relevant Financial Year, after Operationalization of the Hotel Premises, for 3 (three) consecutive years for any reason whatsoever, as set out in this agreement ;
- 20.1.6 In case the Licensing Authority determines that the Concessionaire has, directly or indirectly, or through any Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the bidding process under the RFP, the issuance of the Letter of Award or the execution of this **CONCESSION AGREEMENT** a set out in Clause 15.1;
- 20.1.7 Breach of any of the covenants or representations and warranties by the Concessionaire, which if capable of being cured are not cured within a period of 30 (thirty) days from the date of such breach;
- 20.1.8 Misrepresentation by the Concessionaire, either under this **CONCESSION AGREEMENT** or under any other documents submitted by the Concessionaire to the Licensing Authority, is made or discovered or If it comes to the notice of the Licensing Authority that the Concessionaire has given an incorrect/ inaccurate/ misleading information or has made any misrepresentation, or suppressed any material information/ facts;
- 20.1.9 If the Concessionaire does not provide to the Licensing Authority, within the time specified under this **CONCESSION AGREEMENT**, any information required to be provided by it to the Licensing Authority or as may have been sought by the Licensing Authority;
- 20.1.10 If any act or omission of the Concessionaire results in violation of or non-compliance with any Applicable Law, Applicable Permit, this **CONCESSION AGREEMENT** or the RFP Document, or any other document referred therein or issued pursuant thereto;
- 20.1.11 If an attachment or restraint has been levied on the assets and/or property of the Concessionaire and such attachment or restraint has not been discharged or stayed within a period of 30 (thirty) days of the date of such attachment or restraint.
- 20.1.12 If any Government Authority has acquired, nationalized, appropriated, confiscated, seized, assumed custody or control of or otherwise expropriated all or any property of the Concessionaire or has assumed custody or control of the Concessionaire.
- 20.1.13 If the Concessionaire takes any step to initiate a voluntary proceeding or if any involuntary proceeding against it has been commenced, under any applicable

bankruptcy, insolvency, winding up or other similar law (including those relating to sick companies) now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consents to the appointment or taking occupation by a trustee, administrator, manager, assignee (or similar official) for any part of its assets or property;

- 20.1.14 The Concessionaire is unable to pay its debts or presumed or deemed unable to pay its debts or takes any steps or suffers any actions in relation to protection or relief of debtors, arrangement with creditors, or moratorium / suspension of payments to creditors or any equivalent or analogous proceedings or actions;
- 20.1.15 Performance Guarantee/Security Deposit provided by the Concessionaire has lapsed; or
- 20.1.16 The Concessionaire ceases to carry on its business, including the business of constructing, developing operating and managing the Hotel Premises, for a continuous period of 30 (thirty) days or more, without obtaining the prior written permission from the Licensing Authority.

20.2 Consequences of a Concessionaire Event of Default

- 20.2.1 On the occurrence of a Concessionaire Event of Default, Licensing Authority may give a notice in writing to the Concessionaire for remedying the breach and if the Concessionaire fails to do so within a period of 15 (fifteen) days from the date of such notice, the Licensing Authority may terminate this **CONCESSION AGREEMENT** without giving any further notice. This shall be without prejudice to such other rights the Licensing Authority shall have under, this **CONCESSION AGREEMENT**, the RFP Documents or Applicable Laws;
- 20.2.2 In specific cases of delay of payment of upfront license fee and/or annual License Fee by the Concessionaire, the Licensing Authority reserves the right to collect pre estimate of genuine losses damage at the rate of 15% per annum on the delayed amount. In case any payment is delayed beyond a period of 2 years from the date when such payment was due, the Licensing Authority reserves the right to terminate the Concession Agreement without giving any further notice. This shall be without prejudice to such other rights the Licensing Authority shall have under, this **CONCESSION AGREEMENT**, the RFP Documents or Applicable Laws;
- 20.2.3 In addition to the right to terminate the **CONCESSION AGREEMENT** and other rights and remedies available under Applicable Law or under this **CONCESSION AGREEMENT**, upon occurrence of a Concessionaire Event of Default, the Licensing Authority shall be entitled to;
 - 20.2.3.1 adjust and appropriate the any unpaid License Fee and accrued interest thereon at a rate of 15% per annum;
 - 20.2.3.2 recover any unpaid License Fee and accrued interest thereon at a rate of 15% per annum and all other amounts due and payable by the Concessionaire under this **CONCESSION AGREEMENT** but remaining unpaid, including by way of encashing/ appropriating the Performance Guarantee against such unpaid amounts (if applicable at such time); and
 - 20.2.3.3 seal the Hotel Premises.
- 20.2.4 Termination of the **CONCESSION AGREEMENT** due to Concessionaire Event of Default shall *inter alia* have the following consequences in addition to those mentioned in Clause 3.3 above:
 - 20.2.4.1 Disqualification of the Concessionaire from bidding for any auction or allotment conducted by the Licensing Authority or it's Holding/ Subsidiary companies for a period of 1 (one) year starting from the date of occurrence of such Concessionaire Event of Default. This shall be without prejudice to such other rights the Licensing Authority shall

have under the RFP Document or other law of otherwise;

- 20.2.4.2 All permissions granted by the Concessionaire to any Person to use or occupy any part of the Hotel Premises in accordance with the terms of this **CONCESSION AGREEMENT** shall be deemed to have been withdrawn and revoked with immediate effect and the Concessionaire shall ensure that all such Persons shall immediately vacate the Hotel Premises;
- 20.2.4.3 The Licensing Authority shall be entitled to restrain the Concessionaire and any Person claiming through or under the Concessionaire from entering upon the Hotel Premises or any part thereof; have the right to appoint an entity to undertake operation and maintenance of the Hotel Premises.
- 20.2.4.4 In addition to the right to recover unpaid License Fee and other unpaid amounts in accordance with this **CONCESSION AGREEMENT**, the Licensing Authority shall be entitled to levy and recover from the Concessionaire pre-estimated damages in an amount equal to 25% (twenty five percent) of the market value of the Hotel Premises at the time of such default ("**Pre-estimated Damages**") and such Pre-estimated Damages, are a genuine estimate of loss that the Licensing Authority may suffer due to the acts and omissions on the part of the Concessionaire may be recovered in any manner permitted under Applicable Law including by encashment or appropriation of any balance Performance Guarantee / Security Deposit available with the Licensing Authority (if applicable at such time). The Concessionaire confirms that the amount stipulated as Pre-estimated Damages herein is a genuine pre-estimate of loss and damage likely to be suffered by the Licensing Authority due to a Concessionaire Event of Default and the Concessionaire waives any right to contest the reasonableness of Pre-estimated Damages specified herein.

21. TERMINATION

- 21.1 The **CONCESSION AGREEMENT** shall stand terminated on the expiry of the Term or on early termination in accordance with the terms of this **CONCESSION AGREEMENT**.
- 21.2 The Licensing Authority shall have the right to terminate the license granted hereunder and this **CONCESSION AGREEMENT**:
- 21.2.1 Upon occurrence of a Concessionaire Event of Default; and/or
- 21.2.2 If required of it under any Applicable Law or by any order of a court or tribunal.
- 21.2.3 It is hereby clarified that by the Licensing Authority accepting payment of any License Fee or other charges owed hereunder by the Concessionaire after its due date, the Licensing Authority shall not be deemed to have waived any of its rights against the Concessionaire, either to require prompt payment of such amounts when due or to declare a Concessionaire Event of Default for failure to make such prompt payment(s). Notwithstanding any delay or omission, following any one or more of the aforementioned Concessionaire Events of Default, the Licensing Authority may re-enter the Hotel Premises or any part thereof and repossess the same without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be available to the Licensing Authority on account of non-payment of License Fee or breach of a covenant.
- 21.2.4 Upon expiry of the term or earlier termination of this **CONCESSION AGREEMENT** the Concessionaire will be treated as an encroacher and a trespasser who will have no right whatsoever in the Hotel Premises the Concessionaire authorizes irrevocably the Licensing Authority to execute and register all or any such documents if required / essential for perfecting the termination.
- 21.2.5 Each right of the Licensing Authority provided for in this **CONCESSION AGREEMENT**

shall be cumulative and shall be in addition to every other right provided for in this **CONCESSION AGREEMENT** or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise or beginning of the exercise by the Licensing Authority of any one or more of such rights shall not preclude the simultaneous or later exercise by the Licensing Authority of any or all other rights provided for by this **CONCESSION AGREEMENT** or now or hereafter existing at law or in equity, by statute or otherwise. Nothing herein contained shall be construed as limiting or precluding the recovery by the Licensing Authority against the Concessionaire of any sums or damages to which in addition to the damages particularly provided herein, the Licensing Authority may lawfully be entitled by reason of any default hereunder on the part of the Concessionaire.

22. HANDING OVER OCCUPATION; CONSEQUENCES OF EXPIRY OR TERMINATION

- 22.1 Simultaneously with the expiry of the Term or on early termination of the **CONCESSION AGREEMENT** under the provisions of this **CONCESSION AGREEMENT**:
- 22.1.1 The Concessionaire shall pay all arrears, if any, of all unpaid License Fee and other payments and charges payable by the Concessionaire hereunder;
- 22.1.2 The Concessionaire shall, and shall ensure that all Persons, vacates the Hotel Premises within a period of 7 (seven) days from the date of expiry of the Term or termination of the **CONCESSION AGREEMENT**, whichever is earlier and remove all its movable articles, belongings, and things from the Hotel Premises and shall ensure that its officers, employees and agents remove themselves and their articles, belongings and things from the Hotel Premises and the Concessionaire shall hand over to the Licensing Authority, actual, vacant, and peaceful occupation of the Hotel Premises in working condition (reasonable wear and tear excepted) and modifications made in accordance with the terms of this **CONCESSION AGREEMENT**. The Concessionaire shall not remove any of fixtures or permanent fittings and fixtures, removal of which may cause damage to the Hotel Premises, unless otherwise specifically required by the Licensing Authority. In case of any damage to the Hotel Premises or to any permanent fixture or fitting therein, the Concessionaire shall be obliged, at its cost, to repair any such damage and restore the Hotel Premises to a good and tenantable state.
- 22.1.3 In the event, for any reason whatsoever, the Concessionaire fails to or refuses to or delays in vacating the Hotel Premises within the time period set out in Clause 20.1(b) above, then without prejudice to such rights, the Licensing Authority has under this **CONCESSION AGREEMENT** or under Applicable Law or otherwise including the right to forfeit the entire Performance Guarantee / Security Deposit (if applicable at such time of termination) and the Premium, the Concessionaire shall be obligated to pay to the Licensing Authority in advance, on a weekly basis, 15% (fifteen percent) of the market value of the Hotel Premises at the time of such failure to vacate the Hotel Premises for such period for which it overstays at the Hotel Premises. .
- 22.1.4 Subject to the Concessionaire having handed over actual vacant occupation of the Hotel Premises upon expiry or early termination of the Term and the Concessionaire having paid and discharged all its payment obligations to the Licensing Authority in full (including without limitation all unpaid License Fee and accrued interest thereon and all other amounts due and payable, including the Pre-estimated Damages) under this **CONCESSION AGREEMENT**, the Licensing Authority shall return the balance Performance Guarantee / Security Deposit, if any (and if applicable at such time of termination), to the Concessionaire within a period of 1 (one) month from the date of discharge by the Concessionaire of the aforesaid payment obligations to the Licensing Authority.
- 22.1.5 Upon termination, the Licensing Authority has the right to allot the Hotel Premises

as per its internal policy/decision.

23. SURRENDER BY THE CONCESSIONAIRE

23.1 As and when the Hotel Premises is no longer required by the Concessionaire for the purpose as set out herein, the Concessionaire may, subject to approval from the Licensing Authority, forthwith relinquish and restore the Hotel Premises in favor of the Licensing Authority, provided such surrender of the Hotel Premises by the Concessionaire is made before cancellation of the allotment or termination of this **CONCESSION AGREEMENT** by the Licensing Authority for breach of any of the covenants of this **CONCESSION AGREEMENT**. In the event of surrender, no refund of any amount shall be made to the Concessionaire and all consequences for Concessionaire Event of Default as set out in Clause 20 and other related provisions set out in this **CONCESSION AGREEMENT** shall be applicable to affect such surrender.

24. GOVERNING LAW

24.1 This **CONCESSION AGREEMENT** shall be governed in accordance with the laws of India. Courts at Delhi having competent jurisdiction alone shall have the exclusive jurisdiction to entertain any application or suit in connection with this **CONCESSION AGREEMENT**.

25. NOTICES

25.1 Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this **CONCESSION AGREEMENT** shall be in writing and signed by or on behalf of the Party giving it. Such notice shall be served by delivering it by hand, mail (physical or electronic) or courier to the address set forth below. In each case it shall be marked for the attention of the relevant Party set forth below. Any notice so served shall be deemed to have been duly received (a) when delivery is made by hand, when hand delivered to the other Party; or (b) when sent by physical mail, where 7 (seven) days have elapsed after deposit in the mail with certified mail receipt requested postage prepaid; or (c) when sent by courier on the 1 (one) day after deposit with an overnight delivery service, postage prepaid, with next day delivery guaranteed, provided that the Party sending it receives a confirmation of delivery from the delivery service provider; or (d) when sent by electronic mail notification with return receipt requested, upon the obtaining of a valid return receipt from the recipient.

To the Licensing Authority:

Attention: [●]
Address: [●]
Telephone: [●]
Email: [●]

To the Concessionaire:

Attention: [●]
Address: [●]
Telephone: [●]
Email: [●]

26. AUTHORITY OF PARTIES

26.1 Each of the Parties hereto hereby represent to each other that the Person signing this **CONCESSION AGREEMENT** on behalf of the concerned Party has full and complete authority to do so on its behalf and execution hereof by it creates a legal and binding obligation on the concerned Party.

27. ORIGINAL CONCESSION AGREEMENT

27.1 The Licensing Authority shall retain the registered **CONCESSION AGREEMENT** which bears the full stamp duty and the Concessionaire shall retain a certified copy of the same.

28. STAMP DUTY AND REGISTRATION CHARGES

28.1 This **CONCESSION AGREEMENT** shall be lodged for registration by the Parties and the Parties shall admit execution thereof. All stamp duty and registration charges and related fees, costs, charges and expenses in respect of this **CONCESSION AGREEMENT** and/or any other document pertaining to the license granted hereunder or any other charges by whatever name called, shall be borne and paid by the Concessionaire, alone.

29. LEGAL COSTS

29.1 Each Party shall bear and pay its respective legal costs in respect of this **CONCESSION AGREEMENT** and matters arising there from or connected therewith.

30. OVERRIDING EFFECT

30.1 This **CONCESSION AGREEMENT** constitutes and represents the entire **CONCESSION AGREEMENT** between the Parties hereto on the subject matter hereof and supersedes all prior arrangements, agreements and understandings, whether oral or written on the subject hereof excluding the RFP and bid submitted by the Concessionaire therein.

31. SEVERABILITY

31.1 Should any Clause of, or part of any Clause within, this **CONCESSION AGREEMENT** be rendered void, illegal, invalid or unenforceable for any reason by any Court of law of competent jurisdiction, such provision shall be modified to the extent possible to make it enforceable in such circumstances and any other circumstances, and, whether or not such modification is possible, any such invalidity, illegality or unenforceability shall not render void or illegal or invalid or unenforceable any other Clause or provision of a Clause in this **CONCESSION AGREEMENT**.

32. VARIATION

32.1 No variation, modification or amendment of any of the terms of this **CONCESSION AGREEMENT** shall be valid or binding unless in writing and signed by or on behalf of both Parties hereto.

33. WAIVER

33.1 In any case, if any right, power, or authority of the Licensing Authority which shall have become exercisable including the right to revoke the license hereby granted but the same is, for any reason not exercised, then non-exercise thereof shall not constitute a waiver of any such right, power, or authority of the Licensing Authority or the terms and conditions to be complied thereof by the Concessionaire and the Licensing Authority shall have such right, power or authority exercisable at its discretion, at any time in future, and the liability of the Concessionaire for past and future defaults shall remain unaffected besides other rights and remedies of the Licensing Authority.

34. SURVIVAL

34.1 The expiration or termination of this **CONCESSION AGREEMENT** shall not operate to waive, release or otherwise relieve any Party of any liability that has accrued prior to such termination or expiration. Notwithstanding anything to the contrary, the provisions of this **CONCESSION AGREEMENT** relating to notices, governing law, handover of vacant occupation of Hotel Premises to the Licensing Authority, payment of unpaid License Fee, other outstanding and Liquidated/Pre-estimated Damages and any other covenants and obligations which by their nature are intended to survive, shall survive the termination or expiry of this **CONCESSION AGREEMENT**.

35. FURTHER ASSURANCES

- 35.1 Each Party agrees and undertakes to do all such acts, deeds, matters and things and to execute all necessary writings, documents, instruments and consents as may be desirable or necessary to give effect to the matters contemplated herein.

36. SPECIAL CLAUSES

- 36.1 **Right to first refusal:** Only in the case, where the concession agreement completes its full terms, without termination as per clauses above (except in cases of Force Majeure), the Licensing Authority will have the option to renew the concession agreement for 39 years through a transparent competitive bidding process, with the right of first refusal to the Concessionaire.
- 36.2 Discount on Annual License Fee: To incentivize the Concessionaire for faster operationalization of the Hotel the Licensing Authority shall grant/ allow the following incentive for the Concessionaire:
- 36.2.1 Operationalization of the Hotel on or before 30th June 2022: 25% discount on applicable annual License Fee (exclusive of taxes and duties) for 10 years.
 - 36.2.2 Operationalization of the Hotel on or before 31st September 2022: 20% discount on applicable annual License Fee (exclusive of taxes and duties) for 10 years.
 - 36.2.3 The discount will be applicable only on annual license fee payable from year after completion of milestones in points 1 and 2 (within clause 36.2) herein.
 - 36.2.4 No extension in the deadlines will be allowed for incentives as mentioned above, due to any reason including force majeure.

37. Dispute Resolution

- 37.1 The Parties shall meet and endeavor to amicably resolve through discussions any dispute, difference, claim or controversy including the matter of damages, if any (a "Dispute") that arises between the Parties about the validity, interpretation, implementation or alleged breach of any provision of this Agreement, or anything connected or related to or incidental to this Agreement.
- 37.2 If the Dispute is not amicably resolved by the Parties within 90 (ninety) days of the Parties meeting, either Party may submit the Dispute to arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation (Amendment) Act, 2015 in accordance with the following procedure:
- 37.2.1 The arbitration proceedings shall be held at New Delhi.
 - 37.2.2 There shall be a panel of 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected.
 - 37.2.3 The arbitration proceedings shall be conducted and the award shall be rendered in English.
 - 37.2.4 The arbitrators shall make the award within 3 (three) months of entering upon the reference unless the time is extended by consent of both Parties
 - 37.2.5 The award rendered by the arbitrators shall be final, conclusive and binding on the Parties.
 - 37.2.6 The award shall be enforceable in any court having jurisdiction, subject to Applicable Law.
 - 37.2.7 Each Party shall bear the cost of preparing and presenting its case.
 - 37.2.8 The Parties shall equally share the cost of arbitration, including the arbitrators' fees and expenses.

38. NAMING OF THE HOTEL PREMISES

- 38.1 The Hotel Premises shall be named by the Concessionaire in consultation with the Licensing Authority.

Schedule (*Description of the Land earmarked for the Hotel*):

Plot admeasuring 3.70 acres (equivalent to 14973 square meters) designated for development and operation of a hotel and forming part of the International Exhibition-cum-Convention Centre with constructed area admeasuring approximately. 3,82,000 square meters being developed by India Trade Promotion Organisation at Pragati Maidan.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET AND SUBSCRIBED THEIR RESPECTIVE HANDS THE DAY AND YEAR FIRST ABOVE WRITTEN.

[*ITPO Name of Licensing Authority*]

By_Designation Sign and Stamp

WITNESSED By

By_Designation

Sign and Stamp

[Name of CONCESSIONAIRE]

By_Designation_

Sign and Stamp

WITNESSED By

By_

Designation_

S

ign and Stamp