

DRAFT CONCESSION AGREEMENT



Schedules to Concession Agreement

Dated: December 2024

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Volume 3:
Schedules to Concession Agreement

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SCHEDULE-A: SITE OF THE PROJECT

(See Clause 2.1(a))

1. The Project Site

Project Site of the Hotel shall include the land, [buildings and structures] as described in Annex-I of this Schedule A.

An inventory of the Project Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Project Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

Additional land required for ancillary buildings, extension/ addition of Resort or for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Project Site and vest in the Authority.

Annex-I: SCHEDULE-A

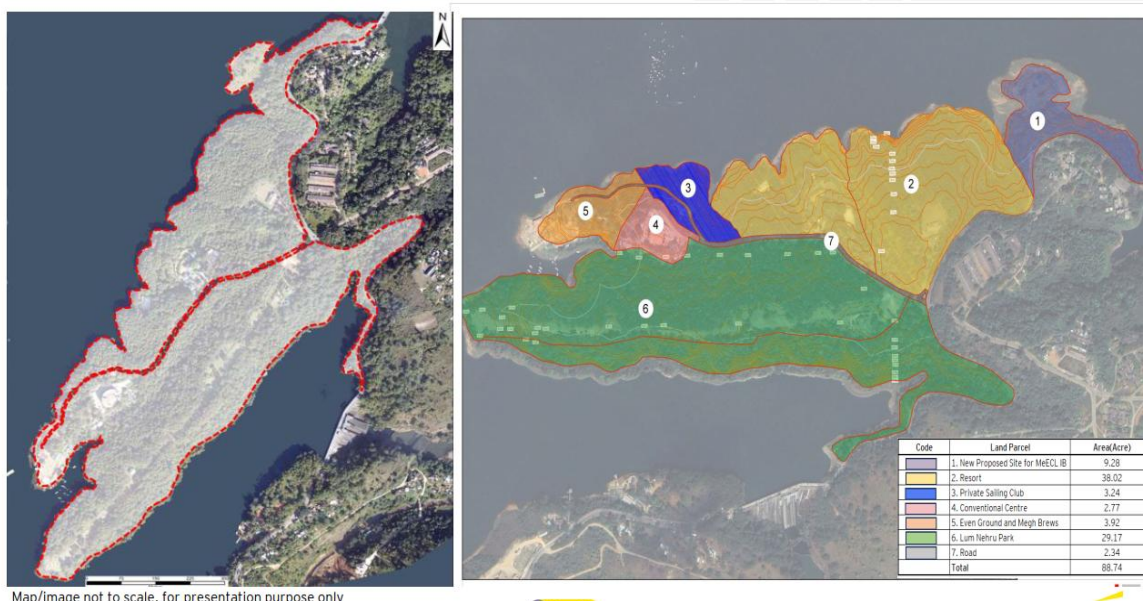
1.1 Project Location

Orchid Lake Resort Umiam, a lakeside retreat nestled in the heart of serene natural surroundings near Umiam, Meghalaya. The existing resort offers a one-of-a-kind experience that seamlessly blends modern luxury with the rustic charm of the great outdoors.

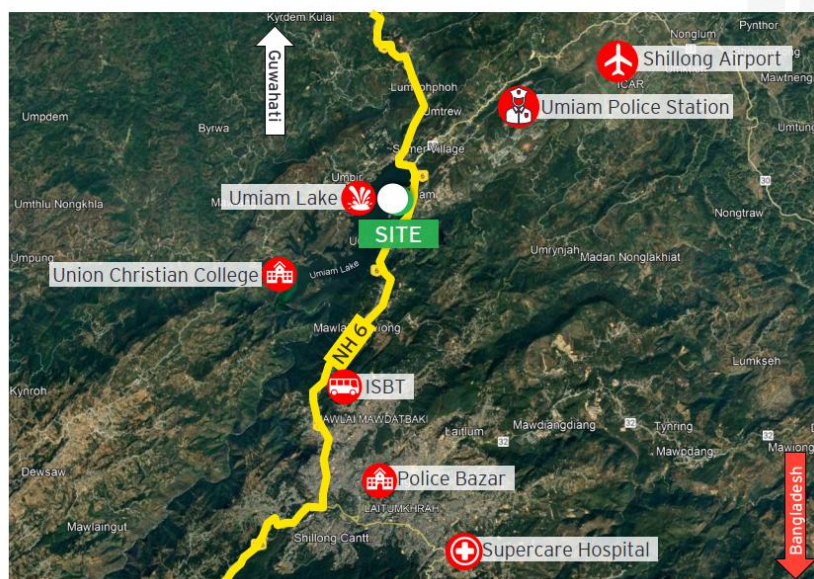
Site Surrounding - Orchid Resort, Umiam Lake



Existing Plan - Orchid Resort, Umiam Lake



Regional Setting - Orchid Resort, Umiam Lake



CONNECTIVITY & LINKAGES

Shillong Airport - 13.5 km

Guwahati Airport - 102 Km

Guwahati Railway Station - 81.7 km

Village Road - Abutting the site

NH 6 - within 3 km

Major Landmarks

Umiam Lake - within 1 km

Police bazar, Shillong CBD - 16.9 Km

ISBT Shillong - 7.2 km

Health Facilities: Supercare Hospital within 20.9 km

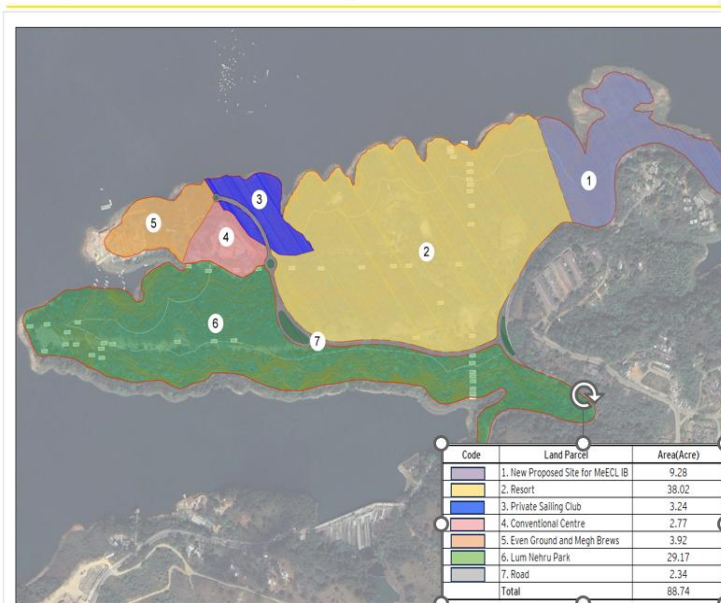
Police Station: Umiam Police Station within 1 km

Multiple Schools & Colleges within 2 Km

1.2 Total Land Area and Ownership

The site admeasures 38.02 acres (approx.) is owned by the Meghalaya Tourism Development Corporation Ltd (MTDC). Meghalaya Tourism Development Corporation Ltd (MTDC) a public sector corporation under the ownership and control of the Government of Meghalaya has the mandate to promote tourism in the state of Meghalaya by showcasing its natural beauty, rich culture, and unique attractions to visitors from around the world.

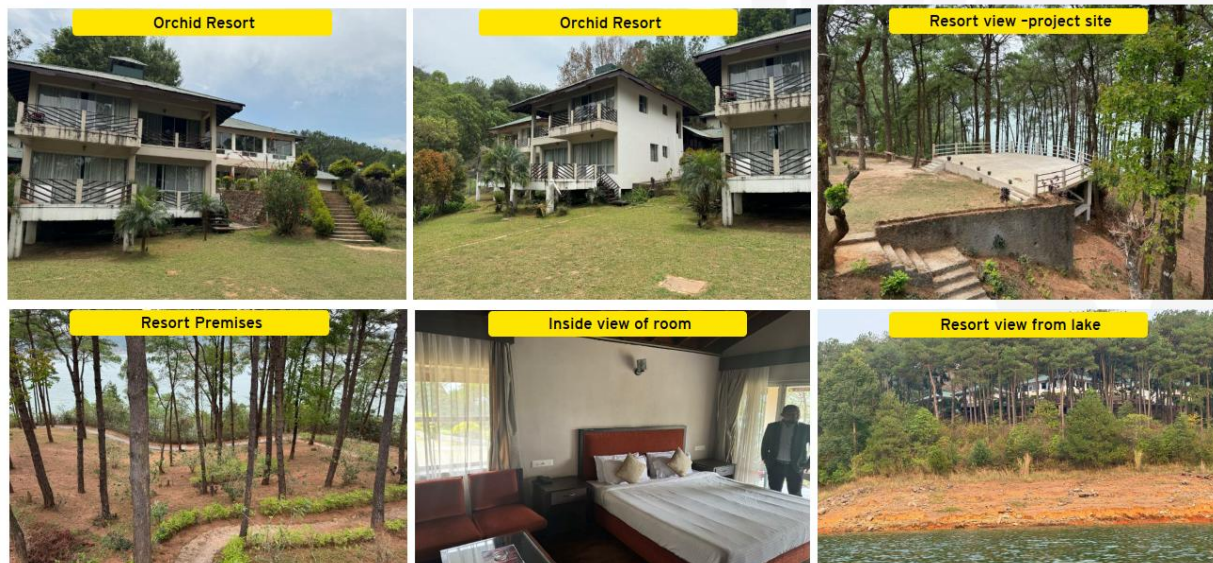
Proposed Plan and Project Site Details - Orchid Resort, Umiam Lake



Site Details

Land Area for development of resort on PPP	<ul style="list-style-type: none"> Total Plot Area - 38.02 acres (Plot -2) Plot area for development after deducting no-construction zone - 28 acres (approx.)
Location	Located bank of <u>Umiam Lake</u> .
Land Ownership	Meghalaya Tourism Development Corporation
Existing Structure	Orchid Resort Rooms - 37 Nos. (Operational-20 rooms), Banquet hall, Restaurant, Swimming Pool
Approach Road	National Highway 6, State Highway 28
Surrounding Developments	<u>Umiam Lake</u> , water sports, <u>Umiam</u> orchid lake resort, various Govt. offices, industrial development in proximity

Project Site - Photos



Lumpondeng Island



Particulars	Description
Area	Orchid Lake Resort -32.64 acres (approximately) Lumpondeng Island -36.78 acres (approximately) Total – 69.42 acres
Location	Orchid Lake Resort and Lumpondeng Island, Umiam, Ri Bhoi District, Meghalaya - 793 103
Location Coordinates	25°39'45.8"N 91°53'49.8"E
Land Ownership	Meghalaya Tourism Development Corporation (MTDC)
Existing Structure	No. of rooms available in the Property – 37 Nos No. of rooms operational in the Property – 20 Nos Amenities – Restaurant, Pool, Garden etc.
Approach Road	Guwahati & Shillong Road (Entrance of Shillong)
Site Boundaries	Umiam Lake, Lush Green Forest
Distance from Airport	Guwahati International Airport – 95 Km Umroi Airport – 15 Km

1.3 Site Zoning

Deleted

1.4 Applicable Development Control Regulations

As per Meghalaya Building Bylaws 2021, the project may be categorised under ‘Special Projects’ – Means those projects / buildings with large scale activities such as Hotels, Public Institutions, Healthcare, Shopping Malls, Multiplexes, ICT / BPO’s, Educational Institution having a minimum plot area of 50,000 sq. ft and a minimum single covered area of 40% of the plot area.

Type of Occupancy	Maximum permissible F.A.R	Maximum permissible Plot Coverage	Maximum no. of Permissible Floors (Inclusive of Basement / Lower Ground Floor / Underground Floor / Cellar)	Maximum Building Height in metres (Inclusive of Basement / Lower Ground Floor / Underground Floor / Cellar/mezzanine floor / Service Floor)
Special Project	3	40%	7	27

Note: At the time of signing of the Concession Agreement, through suitable drawings and description in words, the land comprising the Project Site shall be specified briefly but precisely in this Annex-I. In the event there are any buildings or structures on the Project Site, the same shall be marked in the drawings and briefly described in words.

SCHEDULE-B: DEVELOPMENT OF THE PROJECT / SCOPE OF WORK

1.1 Broad Scope of Work

The Scope of the Project (the **“Scope of the Work”**) shall include during the Concession Period, Design, Finance, Construct, Development and Operation & Maintenance of the Project during the Concession Period by undertaking following activities;

- A. The Concessionaire shall undertake all the activities pertaining to and incidental to the Development and Operation & Maintenance of a minimum 5 Star Resort and ancillary facilities as per applicable development norms and regulations and in adherence to the standards of Hotel & Restaurant Approval Classification Committee (HRACC), Ministry of Tourism, applicable to a 5 Star Category Resort facility or above, including but not limited to the following:
 - a) Taking over of the Project Site on **“as is where is basis”** and plan, design, finance and establish the facility, including development, marketing, providing relevant assets, equipment, clearances/approvals, Change of Land Use (CLU), if applicable, providing ancillary services and amenities related to minimum 5 Star Resort, conforming to Local Building Bye-Laws and Regulations and as per terms of the RFP, Concession Agreement and Schedules thereof. The development shall further conform to the form and architecture of the heritage structure. The development shall be undertaken as per the provisions of Article 2.
 - b) Design, development, and integration of a dedicated island zone within Umiam Lake as a unique destination for exclusive cultural and social events, such as pre-wedding venue for photo shooting, open-air weddings, boutique music/literary festivals, intimate MICE (Meetings, Incentives, Conferences, and Exhibitions) retreats. Facilities to include luxury camps, wellness pavilions, yoga/meditation decks, etc., using lightweight, modular, and sustainable materials that can be relocated or disassembled as needed. The island shall be seamlessly integrated with the main luxury resort operations to provide a unified, high-end guest experience.
 - c) Project Site clearance and cordoning off; providing and deputing of Security including dismantling of existing structures, if required, removal of debris etc.
 - d) Development and Upgradation including retrofitting of existing structure (if required) of the MIDC as per the concept, plan and **“dpr”** and in conformity with the building byelaws and standards set forth in this RFP including, providing installation of all internal and external services and thereafter getting the plans approved from the concerned Authority / Municipal Corporation.
 - e) Use of premium quality materials for Civil/ Electrical/ Public Health works, interior and ornamental works, Furniture, Furnishings and all Fixtures to be in accordance with the minimum standards of a 5 Star or above category Resort.
 - f) Fire systems, all equipments and appliances in Kitchen and BOH Areas (back of house areas), STP and WTP (if required as per specific rules, byelaws, guidelines of any Central / State Government Department / Authority) and Hydro Pneumatic Systems, IT infrastructure, CCTV cameras, server room, PA systems, computers and peripherals, printers, OFC connectivity, SMATV (Single Master Antenna Television) systems, etc.

- g) Development of adequate car parking as per applicable parking norms.
- h) Entry and exits for the Hotel shall be provided and developed considering proper overall traffic circulation within and surrounding roads of the Project Site.
- i) Provision of natural greenery and plants in lobby areas and common areas to keep the environment of the concerned area to look fresh and lively.
- j) All the open spaces in and around the Hotel shall be landscaped and adequately lighted.
- k) Maintaining the standards of a 5-star or above category hotel in accordance with MoT, GoI guidelines.
- l) **Procurement of all required permits/clearances:** The Concessionaire shall take all necessary/mandatory clearances, permits required for design, construction, finance, operation and maintenance of the Project such that all such conditions are satisfied in full and all such Clearances, Permits etc. to execute the Project are in full force and effect.
- m) **Prepare and get approved a DPR:** The Concessionaire shall prepare a DPR to detail out the facilities envisaged by the Concessionaire, details of capital expenditure to be incurred on each facility, designs of the Mandatory Development Obligations etc.
- n) **Set up the Facility:** The Concessionaire shall design and develop/construct/upgrade/redevelop, on the Project Site as per its discretion while ensuring compliance with all Applicable Laws. Pursuant to the completion of the construction, the Concessionaire shall operate, maintain and manage the Project Facilities during the Concession Period.
- o) **Sub-License/Sub-contract:** The Concessionaire shall have the right to sub-contract / license project Facilities for the Concession Period in accordance with the provisions of the concession agreement. The Concessionaire shall obtain prior approval of the Concessioning Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the Licensee shall again obtain prior approval of the Concessioning Authority before entering into an agreement with the sub-licensee.
- p) Operate and manage entire facility
- q) **Provide manpower to manage entire facility:** The Concessionaire shall hire the adequate manpower required for operation and maintenance of requisite facilities.
- r) **Maintenance of all facilities provided in the Project:** The Concessionaire shall ensure that the Project Facilities are properly managed and maintained during the Concession Period.
- s) **Managing Operational Expenses:** The Concessionaire is required to undertake and manage all kinds of operational expenses like consumables, salaries, water, electricity, repair and maintenance, etc. of the facilities during the Concession Period.
- t) **Repair and Maintenance:** The Concessionaire is required to undertake the repair and maintenance work of all the Project Facilities and bear all the cost related to the same.
- u) **Levy of Charges and Collection of Revenue:** The Concessionaire shall have the right to levy and collect revenues, as generated, pursuant to the operationalization of the Project as per its discretion in accordance with the provisions laid down in the Concession Agreement.
- v) During the Concession Period, the Concessionaire shall be required to extend cordial relations to the annual audits conducted by the Technical Auditor appointed by the Concessioning Authority as and when appointed by the Concessioning Authority.

- w) At the end of the Concession Period, by efflux of time or premature termination for any reason whatsoever, all rights given under the Concession Agreement shall cease to have effect and the Project Site & the entire Project, thereof shall transfer back to the Authority as per the provisions of the Concession Agreement. All the immovable assets attached to the Project/Project Site shall revert to Authority without any obligation on Authority to pay or adjust any consideration or other payment to the Concessionaire.
- x) The Concessionaire shall fulfil all other obligations in accordance with the provisions of this Concession Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Concession Agreement and its Schedules thereof.
- y) Performance and fulfilment of all obligations of the Concessionaire in accordance with the provisions of the Concession Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under the Concession Agreement.
- z) The Concessionaire shall be responsible for payment of all taxes including GST as per Gol norms issued in this regard from time to time, duties, levies including stamp duty, and any other statutory charges are required to be paid as per statutory requirements from time to time.
- aa) Conform to and comply with the Acts, Rules and Guidelines of Government of India and Government of Meghalaya, as amended from time to time.

1.2 Bye-Laws & Norms

- a) While undertaking the development of the Project, the Concessionaire shall adhere to all the Applicable Laws inter alia the latest amended National Building Code of India, Local Building Bye-laws, The Energy Conservation Building Code (ECBC) Code, other relevant IS Codes and practices, statutory requirements the principles of Good Industry Practices and any other norms as applicable from time to time.
- b) The Concessionaire shall be responsible for all the Applicable Permits and the Clearances including Change of Land Use Certificate-CLU (if required) as may be required for the development and operations of the Project. The Project shall be ready for operation after taking all the clearance(s), within 24 (twenty-four) months of the Appointed Date. .

In lieu of the rights granted for Concession Period, the Successful Bidder will have to make certain payments (as per financial proposal) to Concessioning Authority. At the end of the Concession Period, all rights given under the Concession Agreement shall cease to have effect and the entire Project shall be transferred back to the Authority in good condition and at zero cost, without any obligation on the Authority to pay or to adjust any consideration or other payment to the Concessionaire.

It is clarified herewith that in addition to the above-stated "Scope of Work", the Concessionaire shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Concession Agreement, the Schedules to the Concession Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the development of the Project.

SCHEDULE-C: SPECIFICATIONS AND STANDARDS

The Project and the Project Facilities to be designed, developed and constructed as a part of the Project shall conform to the regulations, provisions, principles and guidelines as laid down hereunder:

- a) The applicable regulations of the Meghalaya building bye laws.
- b) Regulations and approvals under the Environmental Protection Act, 1986
- c) Latest amended National Building Code of India, other relevant IS Codes, relevant Government Orders (State and Central), Development Control Rules, FSI Limits, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable from time to time.
- d) adherence to the norms of Hotel & Restaurant Approval & Classification Committee (HRACC) applicable for at least a 5-Star Category Facility
- e) adherence to the relevant regulations applicable for development, operation and maintenance of Island
- f) International guidelines including [Griha/LEED/Green Globe]

General industry practices / standards / requirements will need to be adhered to for the design, development, construction, operation and maintenance of the Project.

SCHEDULE-D: DRAWINGS

1. Drawings

In compliance with the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

[Note: The Authority will list and describe in this Schedule all the Drawings that the Concessionaire is required to furnish under Clause 12.2.]

2. Additional Drawings

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed hereinabove, it may by notice require the Concessionaire to furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Expert as if such drawings formed part of this Schedule D.

SCHEDULE-E: APPLICABLE PERMITS

1.1 Necessary Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, the following Necessary Applicable Permits, as Conditions Precedent, on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with the Agreement:

- a) Environmental Clearance – MoEF / State Environmental Impact Assessment Authority / other central or state body, if applicable
- b) No Objection Certificate (NOC) / Clearance – State Pollution Control Board

1.2 Other Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, all Permits and Approvals required for the Project on or before the appointed date, save and except to the waiver granted by the Authority in accordance with this Agreement, including the following, wherever applicable:

Sl No	An indicative List	Agency (As applicable)
1)	Approval of Drawings and Plans for construction/ Layout Plan Approval /Building Plan Approval	Municipal Corporation / Local Area Planning Authority
2)	Water Connection	Local Municipal Body/ Municipal Corporation/Committee
3)	Traffic Management during operation	Traffic Police
4)	Application for PAN, sales tax and other tax registrations etc.	Concerned Departments of State Govt. and Govt of India
5)	Electricity Connection	State Electricity/Board/Corporation
6)	Clearance for employing labour-primary employer	Labour Commissioner
7)	Employment Labour	Labour Commissioner
8)	License for hotel, other activities	Concerning Department of GoM and GoI
9)	Installation of lifts/Elevators/Escalators	Concerning Department of GoM
10)	Fire Safety Equipment/ No Objection Certificate-Fire	Fire Department of GoM
11)	Pollution Certificate/ No Objection Certificate- Pollution	Pollution Department of GoM
12)	License for hotel, other activities	Concerned Departments of State Govt. and Govt of India
13)	Bar License	Concerning Department of GoM
14)	Working in Night Shifts	Police Department, Local Municipal

Sl No	An indicative List	Agency (As applicable)
		Body/Municipal Corporation/Committee
15)	Installation of Diesel Generator Set	Concerning Department of GoM
16)	Permission to Commence Operations	Concessioning Authority
17)	Any other permits or clearance/No Objection Certificates required under Applicable Law	Concerned Competent Authority

SCHEDULE-F: PERFORMANCE SECURITY

PERFORMANCE SECURITY

UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE

Bank Guarantee No.: _____

Dated: _____

ISSUER OF BANK GUARANTEE:

_____ (Name of the Bank)

(Hereinafter referred to as the "Bank")

BENEFICIARY OF BANK GUARANTEE:

The Secretary
Department of Tourism
3rd Secretariat Nokrek Building,
Lower Lachumiere, Shillong 793001,
Meghalaya, India

DETAILS OF THE BANK OF THE BENEFICIARY

Bank: <>

Branch: <>

IFSC Code: <>

NATURE OF BANK GUARANTEE:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the "**Concession**") to be executed amongst the **Tourism Department, Government of Meghalaya (TDGOM)** [hereinafter referred to as the "**Concessions Authority**"] and (name of the Selected Bidder) [hereinafter referred to as the "**Concessionaire**"] for the " **Development, Operation and Maintenance of Orchid Lake Resort, located at Umiam, Ri Bhoi District, Meghalaya into a 5 Star Luxury Resort along with Lumpondeng Island under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP)**" (hereinafter referred to as the "**Project**"), provided however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. "**Performance Security**" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Concessionaire.

As per the terms of Concession Agreement, the Concessionaire is required to furnish to THE AUTHORITY, an unconditional and irrevocable bank guarantee for an amount of INR (Rupees Crores only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement for the Concession Period.

Operative part of the Bank Guarantee:

1. At the request of the _____ (name and address of the Bidder), we _____ (name and address of the bank), (hereinafter referred to as the **"Bank"**), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to **Tourism Department, Government of Meghalaya (TDGOM) (the "Authority")** i.e. the beneficiary on behalf of the Bidder, up to a total sum of INR _____ (**Rupees _____ Only**), such sum being payable by us to the Authority immediately upon receipt of first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from Authority and without any cavil or argument or delaying tactics or reference by us to Bidder and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure on the part of the Bidder to repay the amount of INR _____ (**Rupees _____ Only**), or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of INR _____ (**Rupees _____ Only**).
3. We hereby waive the necessity of the Authority demanding the said amount from Bidder prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the contract, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Bidder, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Contractor. We undertake not to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to pay to the Authority any amount so demanded not exceeding INR _____ (**Rupees _____ Only**), notwithstanding any dispute or disputes raised by Bidder or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority shall be a valid discharge of our liability for payment under this Guarantee, and the Bidder shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____.
8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Shillong having address at _____.

Notwithstanding any contained herein:

- 1) Our liability under this Bank Guarantee shall not exceed Indian INR _____ (Rupees _____ only).
- 2) This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ (Date of Submission of Bid) to _____.
- 3) We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority, serves upon us a written claim or demand on or before _____.

Authorized Signatory (Bank)

SCHEDULE-G: PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and Scheduled Completion Date (the **Project Completion Schedule**). Within [15 (fifteen)] days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. Scheduled Completion Date

The Scheduled Completion Date shall occur on the [3rd (third) anniversary of the Appointed Date]. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Hotel and the Project Infrastructure in accordance with this Agreement.

3. Extension of period

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

SCHEDULE-H: TESTS

1. Schedule for Tests

- 1.1. The Concessionaire shall, no later than [30 (thirty)] days prior to the likely completion of the Hotel, notify the Independent Expert and the Authority of its intent to subject the Hotel to Tests, and no later than [7 (seven)] days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Hotel.
- 1.2. The Concessionaire shall notify the Independent Expert of its readiness to subject the Hotel to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 12 and this Schedule H.

2. Tests

- 2.1. In pursuance of the provisions of Clause 12.4.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2. **Visual and Physical Test**
The Independent Expert shall conduct a visual and physical check of the Hotel, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3. **Trial run**
The Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, a trial run of all equipment, facilities and systems to determine that the Hotel is in conformity with the provisions of this Agreement.
- 2.4. **Tests for equipment**
The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Hotel and described in Schedule-B.
- 2.5. **Environmental audit:**
The Independent Expert shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.6. **Safety review:**
The Independent Expert shall carry out a safety audit of the Project to determine its compliance with the provisions of Schedule-K and this Agreement.
3. **Agency for Conducting Tests**
All Tests set forth in this Schedule H shall be conducted by the Independent Expert or such other agency or person as it may specify in consultation with the Authority.

4. Inspection by the Independent Expert

Upon successful completion of Tests, the Independent Expert shall submit an Inspection Report in accordance with the provisions of Article 12.

5. Tests during Construction

Without prejudice to the provisions of this Schedule H, tests during Construction Period shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE-I: FORMAT FOR COMPLETION CERTIFICATE

To whom it may concern

In consideration of the requirements of conditions of Article 14 of the Agreement and the Concessionaire's application for a Provisional Certificate/Completion Certificate, the Authority hereby grants the Provisional Certificate/Completion Certificate

[This Provisional Certificate has been issued pending completion of the Punch List as described in Annex I to the Provisional Certificate]

This Provisional Certificate/Completion Certificate is issued on the understanding that the conditions of the Agreement have been met except for minor outstanding work that does not affect the use and safety of the [Hotel/Project Infrastructure] and their intended use as certified by Authority through its letter dated [***].

Provisional Certificate/Completion Certificate does not relieve the Concessionaire of any requirements or obligations within the Agreement.

Signed this day of, 20 at

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

SCHEDULE-J: MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule J.
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule J within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within the time limit set forth in Annex-I of this Schedule J.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule J, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Competent Authority.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule J, the Competent Authority may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Competent Authority.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule J, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Competent Authority and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule J, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to

property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

6. Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority at any time during office hours.

7. Divestment Requirements

All defects and deficiencies specified in this Schedule J shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

8. Periodic Maintenance/ Renewal Activities

Apart from the routine maintenance work, periodic maintenance work shall be done by the Concessionaire. All preventive maintenance work shall be listed and the time of their execution should be planned before hand at beginning of year. For Periodic maintenance/Preventive Maintenance a register should be maintained further for Periodic maintenance/Preventive Maintenance work should be so organized that there is little inconvenience to the Users of Project Facility:

9. Major Maintenance Work

The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the Project and all its components. The work shall conform to norms as laid out in PWD specifications / MoT Guidelines / BIS codes / IS codes / NBC codes for functional requirements of buildings etc. The performance standards shall match the service standard of comparable international practice for buildings.

Annex-I: Performance Indicators and their permissible time limits (Schedule-J)

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I to Schedule J within the time limit set forth herein:

Sl. No	Nature of defect or deficiency	Time limit for repair/ rectification
Hotel		
i.	Failure of electric supply (substitution by UPS / generator)	5 seconds
ii.	Damage to floor, walls or paint	48 hours
iii.	Breakage of glass	24 hours
iv.	Breakage of furniture	24 hours
v.	Removal of debris and unclaimed materials	1 hour
vi.	Dirt, garbage, stains or dust on floors, walls, fixtures, signage, counters and furniture	1 hour
vii.	Damage or malfunction of electricity, water and sanitary fittings	4 hours
viii.	Discontinuation of drinking water supply	2 hours
ix.	Choking and/or blockage of sewer lines, drains or rain water pipes	2 hours
x.	Malfunctioning of doors, windows or fixtures	4 hours
xi.	Malfunctioning of lifts	1 hour
xii.	Waste bins when 3/4" full	15 minutes
xiii.	To remain operational 24 (twenty four) hours a day throughout the year	----
xiv.	Information Systems, Displays, signage and boards: To remain operational 24 (twenty four) hours a day throughout the year	All these signage and boards should be clearly visible, legible and functional. Maximum 2% (two percent) number of damaged signage and boards at any given point of time. These shall be cleaned once in a week. Damaged signage and boards replaced, repaired within seven days of their detection.
xv.	All toilets, urinals, bathrooms shall be clean and Functional: To remain operational 24 (twenty four) hours a day throughout the year	A minimum of 95% (ninety-five percent) toilets and urinals shall be functional. It should be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done regularly
xvi.	Natural and Mechanical Ventilation and Illumination	Shall meet the required Illumination level as specified in the IS Code and NBC & guidelines of Govt of Meghalaya. Any disruption in it shall be rectified within 24 (twenty-four) hours. Arrangement for natural ventilation like skylights ventilators, shafts etc. shall be

Sl. No	Nature of defect or deficiency	Time limit for repair/ rectification
		cleared after every 5 (five) days.
xvii.	Water supply and all drinking water chambers: To remain operational 24 (twenty four) hours a day throughout the year	95% (ninety-five percent) drinking water chambers shall be functional. These shall be cleaned daily. Drinking water quality in all the seasons shall be as per CPHEEO/ PHE standards
xviii.	Telecommunication and Networking Equipment: To remain operational 24 (twenty four) hours a day throughout the year	Temporary measures within an hour and permanent restoration within a day.
Approach Roads and Car Parks		
i.	Breach or blockade	Temporary restoration of traffic within 8 hours
ii.	Damage of pavement edge exceeding 10 cm	15 days
iii.	Debris on roads or car park	2 hours
iv.	Damage to shape or position of road side furniture, signs and marking; poor visibility or loss of retro-reflectivity	24 hours
v.	To remain operational 24 (twenty four) hours a day throughout the year	----
Street Lighting		
i.	Any major failure of the system	6 hours
ii.	Faults and minor failures	2 hours
iii.	Lighting level falling below 200 lux	1 hour
Trees and plantation		
i.	Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs	24 hours
ii.	Deterioration in health of trees and bushes	Timely watering and treatment
iii.	Replacement of trees and bushes	30 days
iv.	Removal of vegetation affecting sight line and road structures	3 days

Periodic Maintenance/ Renewal Activities

Sl. No	Periodic Maintenance Activities	Time limit for Maintenance
i.	Repainting of furniture, signage delineators, markings etc.	As per requirement
ii.	Repainting of Buildings and all other structures.	As per requirement
iii.	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, cabins, booths etc.	As per requirement
iv.	Resurfacing of Pavement	Routine repairs every year and premix carpet every 3rd (third) year. In case the pavement is of rigid type, no periodic renewal would be

Sl. No	Periodic Maintenance Activities	Time limit for Maintenance
		required except cleaning & filling of joints.
v.	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual.
vi.	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual.
vii.	Cleaning and disinfecting of water storage/ distribution tanks, water mains	Once in a month
viii.	Cleaning of manholes/ gully chambers/ inspection chambers and flushing of building sewers	Once in 6 (six) months
ix.	Collection of water samples for physical, chemical and bacteriological analysis of water	Once every 15 (fifteen) days
x.	Roof Inspection	Once in a year and before monsoon to see and repair whether roof drainage is functioning properly. Also check for presence of leaks and historical information for leaks during long continued rain, leaks occurring every rain etc. Check exposure of bituminous coating due to loose or missing gravel or slag and fix it on an annual basis. Also check all flashing for wind damage, loss of bituminous coating, loose seams and edges, damaged caulking and curling, and exposed edges
xi.	Water proofing of roofs, terraces, interior/exterior walls, and tanks etc.	Once in 3 (three) years
xii.	Analogous addressable fire detection, fire alarm and firefighting system	Once in a year including conducting of mock drill.
xiii.	Air Conditioning (HVAC) system	Once in a year with cleaning of filters at regular interval.

Other Maintenance Requirements

The Concessionaire shall at all times procure that:

- [the hours of availability of all services provided by the Hotel conform to Good Industry Practice and are posted on the Hotel website;

- b) all the Hospitality Services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available [24 (twenty four)] hours a day and on all days in a year;
- c) the Keys are clean, hygienic and ensure pleasant and healthy environment for its Users;
- d) all recreational facilities and infrastructure services are in working condition and are readily available for use to its users/guests.
- e) proper room service is provided to maintain cleanliness & hygiene of Hotel;
- f) there is adequate lighting within the Project in conformity with the Specifications and Standards; and
- g) Hospitality Services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits and does not adversely affect the marine life or leads to pollution in any way of the Project Site.]

SCHEDULE-K: SAFETY REQUIREMENTS

1. Guiding principles

- 1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2. Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule K.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement;
- (c) relevant Standards/Guidelines contained in nationally accepted codes; and
- (d) Good Industry Practice.

3. Safety measures during Operation Period

- 3.1. The Concessionaire shall develop, implement and administer a safety programme for the Hotel and Project Infrastructure, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2. The Concessionaire shall keep a copy of every First Information Report (FIR) recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule K for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule K, shall be borne by the Concessionaire in accordance with the provisions of Clause 18.2.

Annex-I: Safety Guidelines (Schedule-K)

1. System integrity

In the design of the Hotel and Project Infrastructure, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. [2 (two)] copies of the statement shall be sent to the Independent Expert within [15 (fifteen)] days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Concessionaire prior to [Project COD]. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than [30 (thirty)] days prior to Project COD.

4. Fire safety

- 4.1. To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Schedule C.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than [60 (sixty)] days prior to [Project COD], evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE-L: TERMS OF REFERENCE FOR THE INDEPENDENT EXPERT

1. Role and functions of the Independent Expert

The role and functions of the Independent Expert shall include the following:

- i. review of the Drawings and Documents as set forth in Paragraph 2;
- ii. review inspection and monitoring of Development Works as set forth in Paragraph 2;
- iii. review inspection and testing of Hotel and Project Infrastructure as set forth in Paragraph 2;
- iv. review inspection and monitoring of O&M as set forth in Paragraph 3;
- v. review inspection and monitoring of Divestment Requirements in accordance with the Agreement;
- vi. assisting the Parties in resolution of Disputes as set forth in Paragraph 4; and
- vii. undertaking all other duties and functions in accordance with the Agreement.

The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

2. Construction Period

- 2.1. The Independent Expert shall undertake a review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within [15 (fifteen)] days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 2.2. The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within [7 (seven)] days of receiving such Drawings or Documents.
- 2.3. The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.
- 2.4. The Independent Expert shall inspect the Development Works and equipment (if any) once every quarter, preferably after receipt of the quarterly progress report from the Concessionaire, but before the [20th (twentieth)] day of succeeding month in any case, and make out a report of such inspection (the Inspection Report) setting forth an overview of the status, progress, quality, safety and conformity of Development Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.
- 2.5. The Independent Expert may inspect the Hotel and Project Infrastructure more than once in a quarter.
- 2.6. For determining that the Development Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out,

- tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance.
- 2.7. The sample size of the tests, to be specified by the Independent Expert under Paragraph 2.6, shall comprise [10% (ten per cent)] of the quantity or number of tests prescribed for each category or type of tests in accordance with Good Industry Practice; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to [10% (ten per cent)] for certain categories or types of tests.
- 2.8. The timing of tests referred to in Paragraph 2.7, and the criteria for acceptance rejection of their results shall be determined by the Independent Expert in accordance with Good Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 2.9. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Development Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 2 shall apply to such tests.
- 2.10. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of development and identify potential delays, if any. If the Independent Expert shall determine that completion of the Hotel and Project Infrastructure is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within [15 (fifteen)] days the steps proposed to be taken to expedite progress, and the period within which [Project COD] shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 2.11. If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 2.12. Upon reference from the Authority, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 3. Operation Period**
- 3.1. In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 2 shall apply, mutatis mutandis.
- 3.2. The Independent Expert shall review the annual status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.
- 3.3. The Independent Expert shall inspect the Hotel and Project Infrastructure, at least once every year, preferably after receipt of the yearly status report for the relevant year from the

Concessionaire, but before the [30th (thirtieth) day] after the close of each year in any case, and make out an Inspection Report setting forth an overview of the safety of operations and their conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Hotel and Project Infrastructure. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.

- 3.4. The Independent Expert may inspect the Project more than once a year.
- 3.5. The Independent Expert shall in its Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Hotel and Project Infrastructure is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 3.6. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-J, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 3.7. The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay. The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 13.2.
- 3.8. In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within [15 (fifteen)] days.

4. Assistance in Dispute resolution

- 4.1. When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement.
- 4.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Expert shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

5. Other duties and functions

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

6. Miscellaneous

- 6.1. The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 6.2. A copy of all communications, comments, instructions, Documents sent by the Independent Expert to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.
- 6.3. The Independent Expert shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send one of the copies to the Authority along with its comments thereon.
- 6.4. Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all communications, comments, instructions, Documents, results of tests and other relevant records, and hand them over to the Authority, or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form, or in such other medium, as may be acceptable to the Authority.

SCHEDULE-M: ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of20...

AMONGST

.....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

.....(name and particulars of Lenders' Representative) and having its registered office at....., acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

..... (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

The Tourism Department, Government of Meghalaya represented by Secretary, Department of Tourism and having its principal office(s) (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for " Re-development, Operation and Maintenance of Orchid Lake Resort, located at Umiam, Ri Bhoi District, Meghalaya to 5 Star Luxury Resort under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP)" (the "**Project**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Concession

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

“Agreement” shall mean this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Board of Arbitrators” shall mean an arbitral tribunal comprising of one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board

“Concession Agreement” shall mean the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” shall mean an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Indemnified Party” shall have the meaning ascribed thereto in Clause 9.2;

“Indemnifying Party” shall have the meaning ascribed thereto in Clause 9.2;

“Lenders' Representative” shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

“Nominated Company” shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;;

“Parties” shall mean the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually;

“Payment Date” shall mean, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment;

“Rules” shall have the meaning ascribed thereto in Clause 9.1; and

“Sub-Accounts” shall mean the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s);

1.2 Interpretation

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

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within [30 (thirty)] days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- c) all Revenues from the third party usage of Hotel and its Associated Services;
- d) any other Revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Hotel; and
- e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a) Any monies disbursed by the Authority to the Concessionaire;
- b) all Revenues collected by the Authority, if any, in exercise of its rights under the Concession Agreement; and
- c) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):
- a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
 - b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
 - e) Concession Fee due and payable to the Authority;
 - f) monthly proportionate provision of Debt Service due in an Accounting Year;

- g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
- i) any reserve requirements set forth in the Financing Agreements; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than [60 (sixty)] days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) all Taxes due and payable by the Concessionaire for and in respect of the Hotel;
- b) [90% (ninety per cent)] of Debt Due less Insurance Cover, excluding Subordinated Debt;
- c) Outstanding Concession Fee;
- d) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;
- e) retention and payments relating to the liability for defects and deficiencies set forth in Concession Agreement;
- f) outstanding Debt Service including the balance of Debt Due;
- g) outstanding Subordinated Debt;
- h) incurred or accrued O&M Expenses;
- i) any other payments required to be made under this Agreement; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that the disbursements specified in Sub-Clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or

installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 25 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank,

5.2 Notification of balances

[7 (seven)] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall, within [5 (five)] business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d) shall, within [5 (five)] business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part

of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account, as provided herein, and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [5 (five)] business days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made, within a Cure Period of [5 (five)] business days; or
- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [5 (five)] business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than [45 (forty five)] days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire shall indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

- 9.1.3 The Escrow Bank shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within [15 (fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the **"Rules"**) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

- 10.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Deleted (not used)

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of

the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing page hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .. day of 20 hereunto affixed in the presence of , Director, who has signed these presents in token thereof and , Company Secretary / Authorised Officer who has countersigned the same in token thereof:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of SENIOR LENDERS by the Lenders' Representative</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>
<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of ESCROW BANK by the</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of AUTHORITY by the</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>

SCHEDULE-N: VESTING CERTIFICATE

{Tourism Department, Government of Meghalaya} (the **“Authority”**) refers to the Concession Agreement dated (the **“Agreement”**) entered into between the Authority and (the **“Concessionaire”**) for “Development, Operation and Maintenance of Orchid Lake Resort, located at Umiam, Ri Bhoi District, Meghalaya into a 5 Star Luxury Resort along with Lumpondeng Island under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP)” (the **“Project”**).

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Article 26 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed thisday of, 20.... at.....

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

SCHEDULE-O: SUBSTITUTION AGREEMENT

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

AMONGST

The Tourism Department, Government of Meghalaya represented by Secretary, Department of Tourism and having its principal office(s) (hereinafter referred to as the **"Authority"** which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

.....Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the **"Concessionaire"** which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

.....(name and particulars of Lenders' Representative) and having its registered office at....., acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **"Lenders' Representative"**, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- i. The Authority has entered into a Concession Agreement dated with the Concessionaire (the **"Concession Agreement"**) for "Development, Operation and Maintenance of Orchid Lake Resort, located at Umiam, Ri Bhoi District, Meghalaya into a 5 Star Luxury Resort along with Lumpondeng Island under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP)" (the **"Project"**), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- ii. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- iii. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- iv. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Board of Arbitrators” shall have mean an arbitral tribunal comprising of one nominee arbitrator from the Authority, Concessionaire and Lenders' Representative;

“Financial Default” shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of [3 (three) months];

“Indemnified Party” shall have the meaning ascribed thereto in Clause 7.2;

“Indemnifying Party” shall have the meaning ascribed thereto in Clause 7.2;

“Lenders' Representative” shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

“Nominated Company” shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1;

“Parties” shall mean the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually; and

“Rules” shall have the meaning ascribed thereto in Clause 8.1.1.

1.2 Interpretation

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

2. ASSIGNMENT

1.1 Assignment of rights and title

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

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 25 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within [180 (one hundred and eighty)] days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant [15 (fifteen)] days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of [15 (fifteen)] days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of [180 (one hundred and eighty)] days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of [180 (one hundred and eighty)] days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

- a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within [15 (fifteen)] days from the date

of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within [15 (fifteen)] days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than [75% (seventy five per cent)] of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

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

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

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

5. TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and

upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 25 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

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

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7. INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire shall indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

7.1.3 The Lenders' Representative shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and

expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

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

8. DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the international Centre for Alternate Dispute Resolution, New Delhi (the **"Rules"**) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Deleted (not used)

The Authority unconditionally and irrevocably:

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

Termination of this Agreement:

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

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

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in

good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

<p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .. day of 20 hereunto affixed in the presence of, Director, who has signed these presents in token thereof and , Company Secretary / Authorised Officer who has countersigned the same in token thereof:</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of THE AUTHORITY by</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>
<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of SENIOR LENDERS by the Lenders' Representative</p> <p>(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail Address)</p>	
<p>In presence of:</p>	
<p>1.</p>	<p>2.</p>

SCHEDULE-P: DRAFT LEASE DEED

LEASE DEED

This Lease Deed (“Lease Deed”) is made and executed on thisday of20..... by and amongst:

- 1) Meghalaya Tourism Development Corporation Ltd (MTDC), Government of Meghalaya, an authority represented by its and having its principal office at (hereinafter referred to as the **“Lessor”** which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) and represented herein byof the **FIRST PART**; and
- 2)a company incorporated under the Companies Act, 2013 and having its registered office at (hereinafter referred to as the **“Lessee”** which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) represented herein through Mr....., the Authorized Signatory, as authorized vide Board Resolution dated of the **OTHER PART**

The Lessor and the Lessee are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS

A. The Lessor and the Lessee have entered into a Concession Agreement dated ----- (the **“Concession Agreement”**) pursuant to which the Lessor has, among others, granted to the Lessee, the right to develop the Project Site as “Development, Operation and Maintenance of Orchid Lake Resort, located at Umiam, Ri Bhoi District, Meghalaya into a 5 Star Luxury Resort along with Lumpondeng Island under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP)”, in accordance with the terms and conditions set forth therein.

B. The Lessor is in the prime ownership of the Project Site (the **“Project Site”**) and now desires to lease the Project Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Land for the purpose of implementation of the development of the Project Site.

NOW THEREFORE, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties mutually agree as hereunder.

1.1 Definitions and Interpretation

1. Definitions

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

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the Project Site and development of Project Site during the subsistence of the Lease Deed;

“Encumbrance” means any encumbrance such as easement, right of way, license, mortgage, charge, lien, hypothecation, pre-emptive right or security interest whether or not registered and howsoever arising, including by statute or common law;

“Lease Period” means the term of lease for which the Project Site is given on lease to the Lessee, commencing from the date of signing of Lease Deed and ending on the Expiry Date or Termination Date of the Concession Agreement;

“Lease Rent” shall mean an amount of **INR xx xx xx lakhs per year** payable by the Lessee on yearly basis to the Authority in accordance with the terms of this Agreement and Lease Deed.

“Project Site” shall have the meaning set forth in Schedule 1 to the Concession Agreement; and

2. Interpretations

In this Lease Deed, except to the extent that the context requires otherwise:

- a) the terms of this Lease Deed should be read in consonance with and not in derogation with the terms of Concession Agreement;
- b) the rules of interpretation in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Lease Deed; and
- c) the words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2 Grant of lease and possession

- i. The provisions of this Lease Deed shall take effect and become binding on the Parties on the date first above written (**“Effective Date”**).
- ii. In consideration of the Lease Rent, the Lessor grants on lease to the Lessee and the Lessee agrees to accept the lease from the Lessor, free from Encumbrances and/or encroachments, the Project Site measuring....., described in Schedule 1 to the Concession Agreement, hereto together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Project Site or any part thereof, and to hold, use and enjoy the Project Site and/or any part thereof, in accordance with the provisions of this Lease Deed.
- iii. Subject to the prior express written approval of the Lessor, the Parties agree that the Lessee may sub-lease / sub-license any portion of the Project Facilities, developed on the Project Site to third parties engaged in activities connected with or in relation to the development or operations of Project Site. The sub-lease / sub-license shall not in any manner absolve the Lessee of its obligations under the Lease Deed. Any sub-lease / sub- license, executed under this Lease Deed shall be co-terminable with the Lease Deed. The Lessor shall not be liable in any manner whatsoever in respected such sub-leases.

1.3 Lease Rent

- i. Upon execution of the Lease Deed and in consideration of the Lessor leasing the Project Site to the Lessee and granting the rights, privileges and benefits set forth in this Lease Deed, the Lessee shall pay annual lease rent of **INR per year.**
- ii. The Annual Lease Rent for the Project Site shall become payable from the date of execution of the Lease Deed. The first of such payment shall be made on the date of execution of the Lease Deed and subsequent payments shall be paid on every anniversary of the date of execution of Lease Deed thereof till expiry or early termination of the Lease Period.
- iii. Lease Rental shall be payable by means of a cheque/demand draft/RTGS/NEFT drawn in favour of” payable at Shillong or at such other place as may be notified by the Lessor.
- iv. If the Lessee fails to pay the Lease Rent as aforesaid, the default interest @ 18% shall be charged on the amounts due and payable towards the Annual Lease Rent beginning from the due date of Annual Lease Rent.
- v. The Annual Lease Rent shall be paid by the Concessionaire till the expiry of the Lease Period. The Annual Lease Rent shall be increased by 10% (ten percent) every 3 (three) years, over the last annual rent payable.

1.4 Use of Project Site

During the Term of this Lease Deed, the Lessee agrees to use the Project Site for implementing the development of Project Site as defined in the Concession Agreement. Lessee is not permitted to utilize the Project Site for any other purpose.

1.5 Determination of Lease Deed

- i. This Lease Deed may be determined earlier by mutual agreement between the Parties in writing.
- ii. In the event that the Concession Agreement is terminated, then this Lease Deed shall be determined by the Lessor by giving a 90 (ninety) day notice to the Lessee and upon such termination, the Lessor shall be at full liberty to deal with the Project Site in such manner as it deems fit in its sole discretion.
- iii. The Lessor shall have the right to determine this Lease Deed on occurrence of any one or more default(s) by the Lessee as enlisted hereunder:
 - a) filing of a voluntary bankruptcy petition by the Lessee;
 - b) institution of winding up proceedings against Lessee and such proceedings not being stayed or discharged by a competent court within 180 (one hundred and eighty) days;
 - c) appointment of a receiver of Lessee's assets or any general assignment for the benefit of Lessee's creditors and such appointment or assignment is not stayed by a competent court within 180 (one hundred and eighty) days;
 - c) failure of the Lessee to make payments to the Lessor in accordance with the provisions hereof, where such failure continues for a period of 30 (thirty) days after a written notice from the Lessor;

- d) failure by Lessee to perform any of the covenants, conditions, or obligations mentioned under this Lease Deed where the failure continues for a period of 60 (sixty) days after notice from the Lessor;
 - e) transfer or assignment of this Lease Deed or creation of any Encumbrance on the Project Site without securing prior written approval of the Lessor;
 - f) use of the Project Site for any purpose other than the purposes stated in this Lease Deed and such breach is not remedied within a period of 60 (sixty) days after a notice from the Lessor in this behalf; and
- iv. Upon determination under sub-points i, ii, iii above, the Lessor shall have the following additional rights:
 - a) the recovery of any unpaid Lease Rent due and payable at the time of termination;
 - b) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Deed by the Lessee; and
 - c) any other right or remedy, legal or equitable, that the Lessor is entitled to under Applicable Laws.
- v. The Lessee shall have the right to determine this Lease Deed on account of the occurrence of any of the following events:
 - a) any material breach of the terms and conditions of the Lease Deed by the Lessor, which material breach is not remedied by the Lessor within 90 (ninety) days of receipt of notice regarding such breach; or
 - b) any interference with the peaceful possession of the Project Site by the Lessor due to which the Lessee is not able to carry on its business for a continuous period of 60 (sixty) days or more, which interference is not rectified by the Lessor within a period of 60 (sixty) days from the date on which the Lessee notifies the same to the Lessor.

1.6 Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

- a) subject to the terms of the Lease Deed, the Lessee shall be entitled to hold, use and enjoy the Project Site and every part thereof during the Lease Period, without any interruption by the Lessor;
- b) the Lessee shall, during the Lease Period, enjoy free ingress and egress to and from the Project Site without any hindrance;
- c) subject to timely payment of the Lease Rent and performance of the covenants and conditions of the Lease Deed, the Lessee shall peacefully hold and enjoy the Project Site during the Term of the Lease Deed;
- d) upon execution of the Lease Deed and subject to the terms thereof, the Lessor shall deliver, or cause to be delivered, to the Lessee vacant access and right of way of the Project Site. The Lessor shall, at its cost and expense clear any Encumbrances, including occupation, if any, by third parties prior to delivery of vacant possession of the Project Site to the Lessee;
- e) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Project Site during the Lease Period. For

avoidance of doubt, any taxes, cess, levies with respect to utilization or developments on the Project Site shall be borne by the Lessee;

- f) upon execution of the Lease Deed, the Lessor shall provide the Lessee with any consent(s) or no objection(s) of the Lessor in obtaining power, water, telephone and such other facilities that the Lessee may require, to use and enjoy the Project Site effectively for the purposes stated in this Lease Deed. Such consents or no objection(s) shall be provided by the Lessor within a reasonable time; and
- g) The Parties hereby agree that the Lessee shall not mortgage, transfer, assign or otherwise encumber the Project Site, except as permitted under the Concession Agreement.

1.7 Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

- a) upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Project Site on the condition it is handed over and undertakes to use the same only for the purposes as enlisted in this Lease Deed;
- b) this Lease Deed has been duly authorized, executed, and delivered by the Lessor after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;
- c) during the Term of the Lease Deed, the Lessee shall pay the Lease Rent in accordance with terms and conditions set out in this Lease Deed and shall observe and fulfill each of its obligations and covenants set forth herein;
- d) during the Term of the Lease Deed, the Lessee shall undertake the development of the Project Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the development of Project Site, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- e) at its own cost and expense, the Lessee shall obtain all utilities such as water, electricity from the appropriate authorities;
- f) it shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;
- g) it shall pay all taxes, service tax, cesses, assessments and levies in respect of the Project Site, which are leviable at any time during the Term of the Lease Deed;
- h) it shall not create any lien, charge or Encumbrance on the Project Site, except as permitted in the Concession Agreement, without prior approval of the Lessor;
- i) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Project Site;
- j) it shall (i) keep and maintain the Project Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Project Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Project Site, it shall make diligent efforts to remove such encroachments from the Project Site, as soon as practicable; and
- k) it shall take all necessary care to keep the premises neat and clean and in sanitary conditions.

1.8 Regulatory approvals for construction

The Lessee agrees and covenants that the Lessee shall undertake construction of buildings and/or structures at the Project Site only after obtaining all Applicable Permits as are necessary for such constructions. The Lessee further agrees that the Lessee shall at all times comply with the conditions of such Applicable Permits.

1.9 Inspection by the Lessor

- a) The Lessee agrees and covenants that during the Term of the Lease Deed, the Lessee shall not restrict or obstruct the Lessor and its authorized agents to enter upon and inspect the Project Site at all reasonable hours on any working day.
- b) The Lessee undertakes that the Lessee shall notify the Lessor of any material breach by the Lessee of any Applicable Permits acquired in relation to the Project Site.

1.10 Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by Lessor or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the lease contemplated herein shall be to the account of and borne by the Lessee.

1.11 Indemnities and limitation of liability

The Lessee shall fully indemnify, defend and hold harmless the Lessor, of any liability which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed; and
- b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused willfully or negligently by the Lessee.

1.12 Assignment

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed. However, the Lessee shall be, subject to the terms of Agreement, allowed to create charge / mortgage on the Project Facilities and the Lessee's rights, benefits, entitlements under this Lease Deed, to the Senior Lenders for the purpose raising financing.

1.13 Handover of the Project Site

In the event of termination of the Concession Agreement by efflux of time or otherwise and the land lease determined, the Lessee shall immediately hand over encumbrance free possession of the Project Site along with all structures, development works etc. to the Authority, or to its contractors, sub- contractors, agents.

1.14 Force Majeure

- a) Neither Party shall be liable to the other for non-performance of its obligations under this

- b) Lease Deed (other than the obligation to make payments when due) on account of any event of Force Majeure including but not limited to fire, flood, act of God or irresistible force, civil disobedience, riots, terrorism, strikes, lock-out, act of government, or any other event beyond the reasonable control of such Party.
- c) Where the event of Force Majeure exists for a continuous period of 6 (six) months, the Parties shall mutually decide on the course of action to be adopted, which may include the determination of this Lease Deed.
- d) Notwithstanding anything to the contrary in this Lease Deed, if the Lease Deed is determined, neither Party shall be liable to pay any compensation to the other for such termination.

1.15 Dispute Resolution

- a) The Parties shall use their respective reasonable endeavour to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Lease Deed (“**Dispute**”) amicably between themselves through negotiation.
- b) Any Dispute which the Parties are unable to resolve pursuant to sub-point a above, within 60 (sixty) days (or such longer period as the Parties may agree) of notice by one Party to the other of the existence of a Dispute, shall be resolved in accordance with the provisions of the Concession Agreement.

1.16 Governing Law

This Lease Deed is governed by and shall be construed in accordance with the laws of India.

1.17 General Provisions

1. Entire Agreement

This Lease Deed together with Concession Agreement constitutes the entire agreement between the Parties with respect to the subject matter and the transaction envisaged in this Lease Deed, but shall be subject to the provisions of the Concession Agreement at all times.

2. Waiver

- a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Lease Deed:
 - i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Lease Deed;
 - ii. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - iii. shall not affect the validity or enforceability of this Lease Deed in any manner.
- b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Lease Deed or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

1.18 Severability

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

1.19 Specific Performance

In the event of default or breach in performance of obligations by any Party, the Party in default or breach shall be entitled, without prejudice to its other rights and remedies, to seek and enforce specific performance of this Lease Deed.

1.20 Expenses

Each Party shall pay its own costs and expenses (including, without limitation, the fees and expenses of its agents, authorized representatives, advisors, counsel and accountants) necessary for negotiation, preparation, execution, delivery, performance of and compliance with this Lease Deed.

1.21 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Lease Deed shall be in writing and shall:

- a) in the case of the Lessee, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Lessee may from time to time designate by notice to the Lessor; provided that notices or other communications to be given to an address outside Shillong may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Lessee may from time to time designate by notice to the Lessor;
- b) in the case of the Lessor, be given by facsimile or e-mail and by letter delivered by hand and be addressed to [Department Rep.], Meghalaya Tourism Development Corporation Ltd (MTDC) with a copy delivered to the Lessor's Representative or such other person as the Lessor may from time to time designate by notice to the Lessee; provided that if the Lessee does not have an office in Shillong, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS LEASE DEED AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of , Director, who has signed these presents in token thereof and , company Secretary / Authorized Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED

For and on behalf of Meghalaya Tourism Development Corporation Ltd (MDTC) by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of by:

(Signature)

(Name)

(Designation)

In the presence of:

- 1.
- 2.