



Sardar Sarovar Narmada Nigam Limited

**TENDER DOCUMENT -
DRAFT LICENSE AGREEMENT
April, 2019**

**Selection of Management Operator for Upgradation,
Operation & Maintenance of Shrestha Bharat
Bhawan at Kevadia, Narmada, Gujarat**

Tender Notice No. _____

TENDER DOCUMENT

Draft License Agreement	✓
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For

Selection of Management Operator for Upgradation, Operation & Maintenance of Shrestha Bharat Bhawan at Kevadia, Narmada, Gujarat

(Through online e-tendering process only)

Sardar Sarovar Narmada Nigam Limited

(A Government of Gujarat undertaking)

Block No. 12, New Sachivalaya,

Gandhinagar - 382 010, Gujarat, India

May, 2019

License Agreement

For

**Upgradation, Operation & Maintenance of Shrestha
Bharat Bhawan at Kevadia, Narmada, Gujarat**

Between

**Sardar Sarovar Narmada Nigam Limited (SSNNL)
(Licensor)**

and

**M/s _____
(Licensee)**

TABLE OF CONTENTS

1. Definitions & Interpretations	4
1.1. Definitions	4
1.2. Principal of Interpretation.....	9
1.3. Measurements and Arithmetic Conventions.....	11
1.4. Ambiguities within Agreement.....	11
1.5. Priority of Documents	11
2. License.....	12
2.1. Grant of License.....	12
2.2. License Period	13
2.3. Actions in Support of License	1314
3. Project Facilities.....	15
3.1. License of Project Facilities.....	15
3.2. Sub-License.....	15
3.3. Information about and access to the Project Facilities	15
3.4. Access to Project Facilities	16
3.5. Use of Project Facilities	16
4. Performance Security	17
4.1. Performance Security	17
4.2. Failure to maintain the Performance Security	17
4.3. Appropriation of Performance Security.....	17
4.4. Return of Performance Security	18
5. Obligation of the Parties	19
5.1. Obligation of the Licensor	19
5.2. Obligations of the Licensee	20
5.3. No Breach	2526
6. Representations and Warranties	27
6.1. Representations and Warranties of Parties	27
6.2. Additional Representations & Warranties of the Licensor	27
6.3. Additional Representations and Warranties of the Licensee.....	27
6.4. Disclaimer.....	29
7. Project Monitoring.....	30
7.1. Steering Committee.....	30
7.2. Inspections during License Period.....	30

8. Information and Reporting Requirement	32
8.1. Project Information.....	32
8.2. Other Information	32
8.3. Liability for Information	32
9. Total Annual Premium	33
9.1. Payment of Total Annual Premium.....	33
9.2. Responsibility of Payment of Taxes.....	33
10. Force Majeure	<u>3534</u>
10.1. Force Majeure	<u>3534</u>
10.2. Force Majeure Events	<u>3534</u>
10.3. Notice of Force Majeure Event.....	<u>3635</u>
10.4. Period of Force Majeure.....	<u>3736</u>
10.5. Performance Excused.....	<u>3736</u>
10.6. Resumption of Performance.....	<u>3736</u>
10.7. Costs, Revised Timetable	<u>3736</u>
10.8. Consultation and Duty to Mitigate	<u>3837</u>
10.9. Liability for other losses, damages etc.....	<u>3837</u>
10.10. Termination Due to Force Majeure Event.....	<u>3837</u>
11. Events of Default.....	<u>3938</u>
11.1. Licensor Events of Default.....	<u>3938</u>
11.2. Licensee Events of Default.....	<u>3938</u>
11.3. Rights of Parties	<u>4140</u>
11.4. Consultation Notice	<u>4140</u>
11.5. Remedial Process.....	<u>4140</u>
11.6. Obligations during Cure Period	<u>4140</u>
11.7. Revocation of Consultation Notice	<u>4140</u>
11.8. Termination Due to Events of Default.....	41
12. Termination & Expiry	<u>4342</u>
12.1. Termination Procedure	<u>4342</u>
12.2. Obligations During Termination Period	<u>4342</u>
12.3. Requisition	<u>4342</u>
12.4. Condition Survey.....	<u>4342</u>
12.5. Consequences of Termination.....	<u>4443</u>
12.6. Termination Payments.....	<u>4645</u>
13. Liability and Indemnification	<u>4746</u>

13.1. Indemnification.....	<u>4746</u>
13.2. Risk and Liability	<u>4746</u>
13.3. Indirect or Consequential Losses	<u>4847</u>
13.4. Business Risk	<u>4847</u>
13.5. Survival.....	<u>4847</u>
14. Insurance.....	<u>4948</u>
14.1. Insurance Coverage of Assets	<u>4948</u>
14.2. Evidence of Insurance.....	<u>4948</u>
14.3. Application of Insurance Proceeds	<u>5049</u>
14.4. Insurance Companies and Waiver of Subrogation	<u>5049</u>
15. Dispute Resolution	<u>5150</u>
15.1. Dispute Resolution Mechanism	<u>5150</u>
15.2. Direct Discussion between Parties	<u>5150</u>
15.3. Arbitration.....	<u>5150</u>
15.4. Performance during Dispute	<u>5251</u>
16. Miscellaneous.....	<u>5352</u>
16.1. Governing Law and Jurisdiction	<u>5352</u>
16.2. Waiver & Remedies	<u>5352</u>
16.3. Survival.....	<u>5352</u>
16.4. Entire Agreements and Amendments.....	<u>5453</u>
16.5. Notices.....	<u>5453</u>
16.6. Severability.....	<u>5453</u>
16.7. No Partnership	<u>5554</u>
16.8. Language	<u>5554</u>
16.9. Exclusion of Implied Warranties etc.	<u>5554</u>
16.10. Counterparts	<u>5554</u>
16.11. Further Assurances	<u>5554</u>
16.12. Remedies Cumulative	<u>5554</u>
16.13. No Liability for Review	<u>5655</u>
16.14. Change in Law	<u>5655</u>
16.15. Violation of Terms	<u>5655</u>
16.16. Interest and Right of Set Off.....	<u>5655</u>

SCHEDULES

Schedule- 1: RFP, Scope of Works, Performance Standards, and Addendum to RFP	59
Schedule- 2: Existing Project Facilities.....	60
Schedule- 3: Performance Security	61
Schedule- 4: Service Level Indicators and Applicable Penalties	62
Schedule- 5: Price bid Submitted by the Licensee.....	63
Schedule- 6: Letter Award (LoA).....	64

License Agreement
for Upgradation, Operation & Maintenance of Shrestha Bharat Bhawan at Kevadia,
Narmada, Gujarat

This **License Agreement** is made on _____ day of **April 2019** at Gandhinagar, Gujarat.

By & Between

Sardar Sarovar Narmada Nigam Limited, a statutory body incorporated as per the provisions of the _____ and having its office at **Block No. 12, New Sachivalaya, Gandhinagar - 382 010, Gujarat, India**, hereinafter referred to as the "**SSNNL**" (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and assigns) and represented herein by its **Managing Director**, of the **FIRST PART**;

And

M/s _____, having its registered office at _____, _____, and represented herein through **Mr.** _____, the Authorised Signatory, as authorised vide power of attorney dated _____ **2019** (hereinafter

referred as the "**Licensee**", which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the **Second Part**.

Each of the parties of the **First** and **Second** are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**"

WHEREAS:

- A. The Statue of Unity, tallest statue in the world, was dedicated to the Nation on 31st October 2018, on the birth anniversary of Sardar Vallabhbhai Patel, at Kevadiya in Narmada District of Gujarat. Looking at the interest garnered by the project, State Government is making further efforts at strengthening the tourism offerings and infrastructure support in the region. It is proposed to develop / add suitable opportunities / activities in a phased manner to offer variety to the tourists. Efforts are being made for improving visitor experience, livelihood linkages, environmental concerns and enhancing investment opportunities.
- B. In continuation of same and looking at the increasing tourist footfalls, along with a plethora of other attractions being developed for the tourists, it is intended to provide tourists with a host of stay options near the Statue of Unity. As part of this endeavour, the Authority decided to undertake selection of an Agency, a reputed hotel operator, for Upgradation, Operation & Maintenance of Shrestha Bharat Bhawan, Narmada, Gujarat on Operation and Maintenance (O&M) basis, and has, therefore, decided to carry out the bidding process for selection of the Bidder to whom the work may be awarded.
- C. The Licensor had invited bids for selection of a private sector entity through competitive bidding process for Upgradation, Operation and maintenance (O&M) of Shrestha Bharat Bhawan located at Kevadiya, Gujarat. The bidding process involved issuance of the Request for Proposal (RFP) document dated **06-05-2019** containing inter-alia the technical and financial eligibility criteria for selection of the Preferred Bidder for award of the Project and the terms and conditions for O&M of the Project.
- D. On evaluation of submitted bids, Licensor accepted the bid of the Preferred Bidder and issued Letter of Award (LoA) No. _____ dated **DD/MM/YYYY** (hereinafter called the "**LoA**") to the Preferred Bidder requiring, inter alia, the execution of this License Agreement within 15 (fifteen) days of the date of issue thereof.
- E. Following the issue of the Letter of Award (LoA) and; submission of Performance Security of **Rs. _____ (Rupees _____)** in the form of unconditional and irrevocable bank guarantee from a scheduled Bank in favour of the Licensor; and in terms thereof, the Licensor has agreed for O&M of the Project by the Licensee on the terms, conditions and covenants hereinafter set forth in this License Agreement.
- F. The Licensee acknowledges and confirms that it has undertaken a due diligence audit of all aspects of the Project, legal due diligence, Project Sites/Facilities, its obligation to provide O&M of the Shrestha Bharat Bhawan located at Kevadiya, Gujarat, and on the basis of its independent satisfaction hereby agrees to O&M of the Project at its cost and expense in accordance with the Price bid submitted by the Licensee and accepted by the Licensor and other terms and conditions of this Agreement.

- G. The Licensee acknowledges and confirms that it has gone through the drawings / layout plans of the above referred property specifying the tentative area to be offered to the Licensee for Operation, Maintenance & Management. Licensee further confirms that having gone through the map and understanding that the tentative area as mentioned in the Drawing / Layout Map will only be offered under the said agreement on the 'AS IS WHERE IS BASIS'. The tentative area offered under the said agreement is placed at **Schedule - 2.**
- H. The Licensee further acknowledges that the **Total Annual Premium** quoted in the price bid is only for area mentioned in the map and the Licensor would be limiting its activities during the operations period within such specified area only.

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

1. Definitions & Interpretations

1.1. Definitions

- 1.1.1. The words and expressions defined in this Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed thereto herein, and the words and expressions defined in the schedules and used therein shall have the meaning ascribed thereto in the schedules;

“Abandon” OR “Abandonment” means the abandonment / suspension of the operation, maintenance & management (O&M) of the Project Facility/Facilities, for a continuous period longer than 7 (seven) days without prior consent/approval of the Licensor, provided that the Licensee shall be deemed not to have suspended/abandoned operations when such suspension/abandonment is as a result of Force Majeure Event and is only for the period such Force Majeure is subsisting;

“Accounting Year” OR “Financial Year” means the financial year commencing from the first day of April (1st April) of any calendar year and ending on the thirty-first day of March (31st March) of the next calendar year except in the first and the last calendar years of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date;

“Agreement” OR “License Agreement” means this agreement as of date hereof, including recitals, schedules and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;

“Applicable Laws” means all laws, brought into force and effect by Government of India and/or Government of Gujarat including rules, ordinances, notifications, regulations, bye-laws, directives, guidelines or other governmental restriction or any guidelines and regulations of any concerned regulatory authority made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect on the date of this Agreement and during the subsistence thereof;

“Applicable Permits” means all Clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Licensee under Applicable Laws during the subsistence of this Agreement;

“Approvals” means all Clearances, licenses, permits, authorizations, no objection certificates, consents, approvals of or from any Competent Authority and exemptions required to be obtained or maintained under Applicable Laws in connection with the operation, maintenance and management of the Project during the subsistence of this Agreement;

“Bank” Bank shall mean any Nationalised Bank, or a Scheduled Bank within Reserve

Bank of India Act;

“Bid” means the documents in their entire form (Technical and Price bid) submitted by the Bidder in response to the RFP Document issued by the Licensor in accordance with the provisions thereof;

“Bidder” shall mean such Person who / which (as the case may be) has submitted bid pursuant to the Tender;

“Change in Law” means occurrence of any of the following events after the execution of this Agreement:

- a) Enactment of any new Applicable Law;
- b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- c) the change in interpretation or application of any Applicable Law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of this Agreement;
- d) the imposition of a requirement for any Clearances (other than for cause) not required on the date of this Agreement;
- e) after the date of grant of any Clearances, a change in the terms and conditions attaching to such Clearances (other than for cause) or the attachment of any new terms and conditions to an Clearances (other than for cause); or
- f) any Clearances previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time;
- g) For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the change in management structure of the Licensee according to the opinion of the Licensor;

“Clearance” means any or all permissions, Clearances (including environmental Clearances, pollution clearance and approvals), authorizations, consents, no-objections, approvals of or from any Government Authority required to be obtained under the Applicable Laws in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes as contemplated in this Agreement;

“Commercial Operations” shall mean starting of commercial activities as per provisions of this Agreement;

“Competent Authority” means Government of India (GoI), or Government of Gujarat (GoG) or governmental department, commission, board, body, bureau, agency, authority, instrumentality, or administrative body, central, state, or local, having jurisdiction over the Licensee, the Project, the Project Assets and the works or any part thereof or the performance of all or any of the services, obligations or covenants of Licensee under or pursuant to this Agreement or any portion thereof;

“Compliance Date” means the date on which unencumbered possession in respect of Project Facilities are actually handed over to the Licensee by the Licensor, in terms of this Agreement;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default;

“Dispute” shall have the meaning ascribed thereto in sub-clause 15.1 of this Agreement;

“Dispute Resolution Procedure” means the procedure for resolution of Dispute set forth in clause 15 of this Agreement;

“Directive” means any present or future requirement, instruction, direction, order, regulation or rule of any Competent Authority which is legally binding or which should customarily be observed by a reasonable and prudent owner, designer, operator or construction contractor of facilities similar to the Project Facilities and any modification, extension or replacement thereof from time to time in force;

“Easementary Rights” means all easements, reservations, rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real property;

“Encumbrances” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the Project Sites or Third Party claims or rights of any kind attaching to the Project Sites;

“Event of Default” means the Licensee Event of Default or the Licensor Event of Default and/ or both as the context may admit or require;

“Expert” means any person, body or organisation of repute with recognised technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Licensor;

“Force Majeure” or “Force Majeure Event” has the meaning specified in clause 10 of this Agreement;

“GoI” means the Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of India;

“Good Industry Practice” means the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a

skilled, efficient and experienced services provider and a person engaged in provision of services in similar facility and which inter alia includes those practices, methods, specifications and standards of equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and prudent Licensee, in the operation, maintenance and management and supervision of a Project of the type and size similar to the Project;

“GoG” means the Government of the State of Gujarat, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Gujarat and its administrators, successors and assigns;

“License” shall have the meaning as specified under sub-clause 2.1 of this Agreement

“Licensor” shall mean the **Sardar Sarovar Narmada Nigam Limited (SSNNL)**

“License Period” means a period specified in sub-clause 2.2 of this Agreement;

“Material Adverse Effect” means circumstances which may or does (a) render any right vested in a Party by the terms of this Agreement ineffective or (b) adversely affect or restrict or frustrate (i) the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or (ii) the legality, validity, binding nature or enforceability of this Agreement or any of the Project agreements;

“Material Breach” means a breach of the obligations or terms and conditions of this Agreement or covenants by a Party, which has a Material Adverse Effect;

“Operation Period” means the period commencing from the date of start of Commercial Operations of the Project and ending on the expiry or prior termination of this Agreement;

“Party” individually means the Licensor or the Licensee as the context may admit or require and Parties shall mean collectively the both;

“Performance Security” means the irrevocable and unconditional bank guarantee, as the context may require or admit, provided by the Licensee as per clause 4 of this Agreement;

“Performance Standards” means the performance parameters for the operation, maintenance and management of the Project Facilities in accordance with this Agreement and as per provisions set forth in Schedule-1 of this Agreement;

“Person” means any individual, corporation, partnership, joint venture, trust, society, unincorporated organisation, government or governmental authority or agency or any other legal entity;

“Project” means, subject to the provisions of this Agreement and in accordance with Applicable Laws, Specifications and Standards and Good Industry Practices Upgradation, Operation, Maintenance and Management (O&M) of premises Shrestha Bharat Bhawan at Kevadiya, Gujarat.

“Preferred Bidder” or **“Management Operator”** or **“Licensee”** shall mean the M/s _____ whose has offered the highest Total Annual Premium (**Rs.**

_____) and whose bid has been accepted by the Authority and has been issued a Letter of Award vide letter No. _____ dated _____;

“Project Assets” means all tangible and intangible assets relating to the Project Facilities including, but not limited to, (a) use of Project Facilities/ Project Sites as per the provisions of this Licensee Agreement (b) tangible assets such as foundation, buildings, substructures and superstructures, pavements, works, drainage facilities, utilities, sign boards, equipment, technology, spare parts, electrical works for lightings and communication equipment at the Project Facilities; (c) financial assets, such as receivables, cash, charges and investments; (d) rights under this Agreement and (e) insurance proceeds;

“Project Facilities” means collectively the facilities created/constructed at the Project Site including associated equipment, furniture & fixtures and other assets owned by the Licensor; and unencumbered possession whereof shall be handed over to the Licensee in terms of this Agreement; for undertaking its operation, maintenance and management in accordance with the provisions hereof;

“Project Site” means the area under consideration of restaurant premises located at **SSB, Kevadiya** having an area as detailed in Map at **Schedule 2**.

Request for Proposal Document OR RFP Document means the Request for Proposal (RFP) document dated **06-05-2019** issued by the Licensor inviting proposals/bids for the Project, and includes any addendum/clarifications issued in respect thereof by the Licensor;

“SBI Base Rate” means the rate of interest specified or declared by the State Bank of India (SBI) from time to time, in accordance with the guidelines prescribed by RBI in regard;

“Scheduled Commercial Operations Date” means the date corresponding to the _____ (_____) day from the Compliance Date;

“Scope of Works” shall have the meaning ascribed to it in Schedule-1 of this Agreement;

“Security Interest” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

“Specifications and Standards” means collectively the technical Specifications and the performance standards for the Project Facilities in accordance with this Agreement and as per the provisions set forth in Schedule-1 of this agreement;

“Staff” means all persons employed or engaged (including volunteers, agency, casual or contract personnel) by the Licensee in the provision of the Project or any activity related to, or connected with the provision of the Project, including Consultants;

“Statutory Auditors” means a reputed firm of chartered accountants duly licensed to practice in India acting as statutory auditor of the Licensee;

“Steering Committee” means the committee constituted by Licensor in accordance with the provisions of sub-clause 7.1;

“Tax” means all forms of taxes whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by GoI, Licensor or Competent Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;

“Termination” means prior termination of this Agreement pursuant to Termination Notice, but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;

“Termination Payment” means the aggregate of the amounts payable by Licensor to the Licensee or vice-versa under the Agreement upon Termination;

“Third Party” means any Person, real or judicial, or entity other than the Parties to this Agreement;

“Transfer Date” means the date on which this Agreement and the rights hereunder expire pursuant to the provisions of this Agreement or is terminated earlier in accordance with the terms of this Agreement.

1.2. Principal of Interpretation

1.2.1. In this Agreement, unless the context otherwise requires:

- a) reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- b) words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender; and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- c) the table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- d) words “include” and “including” are to be construed without limitation;
- e) any reference to any point in time shall mean a reference to that point in time

- according to Indian Standard Time; any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- f) any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
 - g) the schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - h) reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified, novated or suspended at the time of such reference;
 - i) references to recitals, clauses, sub-clauses, schedules, Annexures in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, clauses, sub-clauses, annexure of or to this Agreement;
 - j) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;
 - k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorised representative of such Party;
 - l) wherever in this Agreement provision is made for giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “endorsed”, “consent”, “approval”, “certify” or “determined” shall be construed accordingly;
 - m) unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
 - n) any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
 - o) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;
 - p) reference to an individual shall include his legal representative, successor, legal heir, executor and administrator;
 - q) reference to a Person shall be construed as including a reference to its successors and permitted assigns in accordance with their respective interests;

- r) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the schedules and used therein shall have the meaning ascribed thereto in the schedules;
- s) references to any date shall mean and include such date or period as may be extended pursuant to this Agreement or by mutual consent of the Parties hereto.

1.3. Measurements and Arithmetic Conventions

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

1.4. Ambiguities within Agreement

- 1.4.1. In case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - a) between two clauses of this Agreement, the provisions of specific clauses relevant to the issue under consideration shall prevail over those in other clauses;
 - b) between the clauses and the schedules, the clauses shall prevail, save and except as expressly provided in the clauses or the schedules;
 - c) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
 - d) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail;
 - e) between any value written in numerals and that in words, the latter shall prevail.

1.5. Priority of Documents

- 1.5.1. The documents forming part of bidding process leading to this Agreement shall be interpreted in the following order of priority:
 - a) This License Agreement along with its schedules
 - b) Letter of Award (LoA) No. _____ dated _____,
 - c) RFP document dated **06-05-2019**

2. License

2.1. Grant of License

- 2.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement and Applicable Laws, Good Industry Practice, and Specifications and Standards, the Licensor hereby grants and authorises the Licensee and the Licensee hereby accepts the exclusive rights and authority during the License Period for operation, maintenance and management of the Project Facilities and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement, including but not limited to the right to charge, demand, collect, retain and appropriate charges (collectively the “**License**”).
- 2.1.2. For this purpose, subject to provisions of this Agreement, the Licensor hereby grants the Licensee the exclusive right and authority during the License Period to:
- a) operate, maintain and manage the Project as per Specifications and Standards, Applicable Laws, Clearances and Good Industry Practice, and handover it to the Licensor or its nominated agency on the expiry or prior termination of the License Period as the case may be;
 - b) fulfil the obligations relating to Upgrading, Operating, Maintaining and Managing the Project (Shrestha Bharat Bhawan at Kevadia, Narmada, Gujarat) and to other customers in accordance with the Specifications and Standards, Applicable Laws, Clearances and Good Industry Practice. Licensee may install/bring more equipment/facilities at its own cost to upgrade Project Facilities subject to provisions of this Agreement. Licensor reserves the right to approve or not approve any or all Other Related Services;
 - c) make upgradation or minor modifications/alterations at the Project Facilities subject to obtaining prior written approval of Licensor and compliance of Applicable Laws, byelaws, regulations, Clearances etc. The Project Amenity/ies (Shrestha Bharat Bhawan) is handed over to Licensee on ‘AS IS WHERE IS CONDITION’. Any improvements need to be done only by the Licensee / Management Operator at his own cost with written approval of SSNNL.
 - d) Any improvements / repairs/ installations / modifications etc. done to the existing project facilities / structure, if required, should be with prior approval of SSNNL; subject to compliance to the existing local bye-laws and development control regulations and approval of the local authority; based on the following conditions:
 - The cost for improvements / repairs/ installations / modifications etc. for the property shall be borne by the Licensee. No reimbursements shall be done by the Authority during or after expiry of License Period for the investments made by the Licensee during the License Period.
 - The Licensee shall not be allowed to carry out additional construction in the property which is beyond the maximum available limit of FSI and Ground Coverage. No demolition/destruction/deletion of the existing structure(s) is

allowed.

- The Licensee shall maintain the building in good condition, the Licensee shall be liable to bring in all furniture, electrical fixtures and other fixtures required for operations of the property premise.

e) It is hereby confirmed that the effective date shall be from the date on which Upgradation / Improvement is completed. The cost for minor repairs for the property shall to be borne by the Licensee. Licensee and Licensor have jointly decided that Commercial Operation for the property shall start on or before 1st September 2019.

The Licensee hereby agrees that operations would start on or before dates as given above and the payment of **Total Annual Premium** shall start from such date;

f) to operate the property only. The Licensee shall not run the property in their name or their franchise name; anyhow the same shall be done with due permission of the Authority. The Licensee shall be required to put up signage mentioning name as per the following template:

‘ _____ **(name of Brand), SSB: An SSNNL Initiative’ and**

The Signage shall be back lit and shall be placed at site; All signage designs shall have to be approved by Authority.

2.1.3. The Licensee shall be entitled to determine, demand, charge, collect, retain, appropriate and periodically revise the Charges, on and from the date of starting Commercial Operations and until the end of Operations Period, as per the provisions of this Agreement.

2.2. License Period

The License Period shall commence from the Compliance Date and shall extend for a period of **20 (twenty) years** from Compliance Date or until prior termination of the Agreement, as the case may be. **It is also clarified that if the Authority is satisfied with the performance of the Concessionaire during the Concession Period, it may by order, extend the Concession Period by a period of 15 years, on such terms and conditions as may be mutually agreed.**

2.3. Actions in Support of License

2.3.1. Licensor shall, on best effort basis, upon written request from the Licensee, recommend, endorse, promote, assist and provide all assistance and recommendations to the competent authorities, including Government of India (GoI), in support of the Licensee’s applications for Clearances that may be needed from time-to-time for O&M of the Project; provided the Licensee has made the requisite applications complete in

all respects, paid the processing fee and is in compliance with all the necessary conditions and eligibility norms for the grant of such Clearances.

- 2.3.2. The Licensee agrees and accepts that the objective of the Licensor in developing the Project is to Upgrade, Operate, Manage and Maintain the Facilities and the Licensee shall ensure that the such facilities and services shall be available at all times throughout the License Period.
- 2.3.3. The Licensee undertakes that it shall Upgrade, Operate, Manage and Maintain the Project during the License Period and shall vacate the Project Facilities at the end of the License Period or prior termination of the Agreement, as the case may be and cause all Persons claiming through or under it to vacate there from, without any demur or delay, and simultaneously therewith hand over peaceful and unencumbered possession of the Project Facilities to the Licensor.
- 2.3.4. The Licensor agrees and accepts that the Licensee shall have entitlement to determine, demand, charge, collect, retain, appropriate and periodically revise the Charges as per the provisions of this Agreement. The Licensor expressly recognizes the aforesaid rights of the Licensee and the Licensee's right to avail all remedies under Applicable Law and this Agreement for the recovery of Charges.

3. Project Facilities

3.1. License of Project Facilities

- 3.1.1. The Licensor hereby grants the Licensee, the License to enter upon and access to the Project Facilities to Upgrade, operate, maintain and manage the Project, from the Compliance Date until the expiry of License Period or its prior termination, for Upgrading, Operating, Managing and Maintaining the Project as per terms and conditions permitted by Licensor at the Licensee's cost, risk and consequence. The Licensor or any of its Competent Authorities shall have no liability whatsoever in this behalf, whether upon termination of this Agreement or otherwise.
- 3.1.2. The Parties shall, within 15 (fifteen) days of signing of this Agreement, carry out, through their duly authorised representative(s), a joint inspection and verification of all the real estate, structures, land, buildings, equipment, furniture etc. at the Project Facilities and record a report thereof in a memorandum duly signed by the Parties/their representatives. The participation of both Parties in such joint inspection shall be mandatory. Such memorandum as aforesaid shall be in two counterparts; one counterpart shall be retained by each Party.
- 3.1.3. After completion of joint inspection by the Parties, peaceful and unencumbered possession of the Project Facilities shall be handed over by the Licensor to the Licensee on "AS-IS-WHERE-IS BASIS" as per the provisions of this Agreement.
- 3.1.4. The Licensee and the persons claiming through or under it shall keep the Project Sites free from any trespass or encroachment and keep the Licensor informed thereof and take appropriate and timely legal and remedial action.

3.2. Sub-License

- 3.2.1. The Licensor shall not sub-license any of the project components to any other party/person.
- 3.2.2. The Licensee's failure to comply with section 3.2.1 shall be at its cost, risk and consequence and constitute a Licensee Event of Default that shall entitle the Licensor to terminate this Agreement.

3.3. Information about and access to the Project Facilities

- 3.3.1. The information about the Project Facilities set out in **Schedule-2** of this Agreement is provided by the Licensor in good faith and with due regard to the matters for which such information is required by the Licensee. The Licensor agrees to provide to the Licensee, upon a written request, any further information relating to the Project Facilities, which the Licensor may now possess or may hereafter come to possess. However, the information provided about the Project Facilities set out in **Schedule-2** of this Agreement may not be accurate or exhaustive; therefore, Licensee is required to make its own assessment. Subject to this, the Licensor makes no representation and gives no warranty to the Licensee in respect of the condition of the Project Facilities and

the Licensee shall accept the Project Facilities handed over to it by the Licensor on “AS-IS-WHERE-IS BASIS”.

3.4. Access to Project Facilities

- 3.4.1. Following the handing over Project Facilities, the Licensee shall, at all reasonable times allow access to the Project Facilities to the representatives of or Persons duly authorized by the Licensor or any relevant competent authority concerned with safety, security, health or environmental protection etc. to inspect the Project Facilities and to investigate any other matter within its authority.

3.5. Use of Project Facilities

- 3.5.1. The Licensee shall not, without the prior written consent of the Licensor, use the Project Facilities for any purpose other than the purpose of Upgradation, Operation, Management and Maintenance of the Project and for purposes incidental or necessary thereto as permitted under this Agreement. The Licensee accepts that this is an essential condition of this Agreement, the breach of which shall constitute a Licensee Event of Default that shall entitle the Licensor to terminate this Agreement in accordance with the provisions of **clause 12** of this Agreement.
- 3.5.2. The Licensee shall not part with or create any Encumbrances on the whole or any part of the Project Sites and/or Project Facilities. The Licensee shall not, under any circumstance whatsoever, mortgage, assign, transfer, sub-license, convey or otherwise alienate or dispose of the Project Sites and/or the Project Facilities. Further, it is hereby clarified that this Agreement cannot be assigned by the Licensee and that the Licensee shall neither create nor permit to subsist any Encumbrance or title defect over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement.

4. Performance Security

4.1. Performance Security

4.1.1. **Upgradation Performance Security:** For securing the due and punctual performance of obligations of the Licensee under this Agreement, the Licensee, as precondition to execution of this Agreement, has, within 15 (fifteen) days of the date of Letter of Award (LoA), delivered to the Licensor an unconditional and irrevocable bank guarantee furnished by a Scheduled / Nationalised Bank, in favour of Licensor for **Rs. 40,00,000/- (Rupees forty lakhs only)** having validity period of 12 (twelve) months from the date of execution of this Agreement, payable and enforceable in Gandhinagar, substantially in the form provided along with the Letter of Award (the "**Performance Security**"), the receipt & veracity of which, is hereby acknowledged by the Licensor. Performance Security received from Licensee is annexed as **Schedule-3** of this Agreement.

4.1.2. **Operation & Maintenance (O&M) Performance Security:** The Licensee shall for due and punctual performance of obligations during the Operations Period under the License Agreement, furnish an irrevocable and unconditional bank guarantee (as per format placed at Draft License Agreement) from nationalized/scheduled bank acceptable to the Authority, having a branch at Gandhinagar, Gujarat, for an amount of **Rs. 50,00,000 (Rupees fifty lakhs only)**. The amount for the Bank Guarantee shall be escalated by 12% (twelve percent) on compounding basis every 3 (three) years.

This Bank Guarantee shall be valid initially for 1 (one) year and thereafter kept valid & effective during the Agreement period by renewing its validity three (3) months prior to its expiry. The Bank Guarantee should be issued from Nationalized Bank or Schedule Bank.

4.2. Failure to maintain the Performance Security

4.2.1. The Licensee shall keep and maintain the Operation & Maintenance (O&M) Performance Security valid and in full force and effect at all times up till the expiry of license term from the date of execution of this Agreement. This is an essential condition of the Agreement and the failure to maintain the Performance Security in accordance with the provisions hereof shall constitute a Licensee's Event of Default and shall entitle the Licensor to terminate this Agreement in accordance with the provisions hereof. Any delay in submitting/extending the validity of Performance Security shall constitute a Licensee's Event of Default and shall entitle the Licensor to terminate this Agreement in accordance with the provisions hereof.

4.3. Appropriation of Performance Security

4.3.1. In the event of the Licensee being in default of the due, faithful and punctual performance of its obligations under this Agreement and fails to remedy such default within the relevant Cure Period or owes any sums to the Licensor under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Licensor for or

against the Licensee under this Agreement or against the Licensor in respect of this Agreement, the Licensor shall, without prejudice to its other rights and remedies hereunder or in law, invoke the Bank Guarantee for Performance Security and appropriate relevant or delinquent amounts as damages for such default, dues, demands or claims.

- 4.3.2. The decision of the Licensor as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Licensee. The Licensee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Licensor under this Agreement is required to be provided in connection with any demand made by the Licensor to recover such compensation through invocation of Performance Security under this Agreement and that no document or any action shall be required other than the Licensor's written demand in this behalf.
- 4.3.3. In the event of invocation of Performance Security by the Licensor, in full or part, the Licensee shall forthwith of such invocation and in any case within 30 (thirty) days of receipt of the invocation notice from the Licensor provide a fresh Performance Security or replenish the existing Performance Security to its full value, as the case may be. The provisions of this clause 4 shall apply mutatis mutandis to such fresh Performance Security. The Licensee's failure to comply with this provision shall constitute a Licensee Event of Default which shall entitle the Licensor to terminate this Agreement in accordance with the provisions of clause 12 of this Agreement.

4.4. Return of Performance Security

- 4.4.1. Subject to the provisions of this Agreement, the Licensor shall return the Performance Security to the Licensee within 90 (ninety) days without any interest following the expiry or prior termination of this Agreement, as the case may be, provided that there are no outstanding claims of the Licensor on the Licensee in terms hereof in which event amount of outstanding claims shall be appropriated from Performance Security.
- 4.4.2. In case of Upgradation Performance Security, the same shall be returned after submission of Operation & Maintenance (O&M) Performance Security by the Licensee.

5. Obligation of the Parties

5.1. Obligation of the Licensor

The Licensor, in addition to and without prejudice to its obligations specified elsewhere in this Agreement, shall, without qualification, observe and comply with the following obligations during the License Period:

- 5.1.1. the Licensor shall permit the Licensee to upgrade, operate, maintain and manage the Project Facilities as permitted by Licensor; provided the Licensee procures the necessary clearances in this behalf as may be required;
- 5.1.2. upon written request from the Licensee, the Licensor shall, on best endeavor basis, facilitate the Licensee with access in respect of the Project Facilities to all infrastructure facilities and utilities, as may be required, including water, electricity, telecommunication, sewerage and drainage facilities at fair rates and on terms no less favourable to the Licensee than those generally available to customers receiving substantially equivalent services; provided the Licensee has made the requisite applications complete in all necessary details and is in compliance with the necessary conditions for getting such connections;
- 5.1.3. upon written request from the Licensee, the Licensor, at appropriate stages of the Project, on best effort basis, shall grant or cause to be granted all Clearances which are necessary for Upgradation, Operation, Management and Maintenance of the Project and which are in its authority to grant or cause to be granted subject to the Licensee having made the requisite applications complete in all necessary details and is in compliance with the necessary conditions for such Clearances and complies with the eligibility criteria for the grant of such clearances;
- 5.1.4. the Licensor undertakes not to exempt, in any manner and to any extent, any customer from the obligation to pay applicable charges to the Licensee for the services provided by it;
- 5.1.5. the Licensor agrees to the Licensee's right to advertise and set up and display hoardings, billboards and other information panels at the Project Facilities regarding availability of the services and other services permitted by the Licensor at the Project Facilities in accordance with the Applicable Laws; Licensee may include value added services for entertainment of the tourists, with prior approval of the Licensor; Licensor shall extend its support to the Licensee for marketing through its website;
- 5.1.6. all litigation involving the Project Facilities prior to handing over to the Licensee and wherein actions have been filed against the Licensor shall be conducted solely by the Licensor at its cost and the Licensee shall not be liable for the same;
- 5.1.7. the Licensor will facilitate / provide the following:
 - An area of about 1000 sq m around the SBB site for facilities like Driver's room, staff change room / wash room / rest room etc. Licensee shall be allowed to

create infrastructure, at its own cost, of temporary nature only, after due approvals of the same from SSNNL.

- 10 One-Bed Room Apartments and 4 Two-Bed Room Apartments at reasonable rent at Kevadiya, in closed proximity to SBB.
- Facilitate and extend all possible non-financial support in this regard.

5.1.8. **the Licensor accepts and acknowledges that the Licensee may install/bring more equipment /facilities at its own cost to upgrade Project Facilities subject to provisions of this Agreement. Licensee shall ensure compliance with the terms and conditions of this License Agreement and all Applicable Laws, Clearances, bylaws, regulations etc. as may be required for installation of Other Related Services.**

5.2. **Obligations of the Licensee**

The Licensee, in addition and without prejudice to its obligations, duties and responsibilities specified in other provisions of this License Agreement, shall, during the License Period without qualification, observe and comply with the following obligations. The Licensee shall:

- 5.2.1. takeover possession of the Project Facilities from the Licensor, after the joint inspection is carried out by Parties, in terms hereof and operate, maintain and manage the Project Facilities in accordance with the terms of this Agreement and Scope of Work & Performance Standards as specified in **Schedule-1** of this Agreement, including the Specification and Standards, Applicable Laws, Clearances and Good Industry Practice;
- 5.2.2. without prejudice to the Licensor's obligations, if any, in this respect, make or cause to be made the necessary applications to the relevant competent authority for all Clearances and supply the appropriate particulars and details to such competent authority as may be necessary for confirming that the Licensee fulfills the eligibility/qualification criteria to enable such authority reasonably to consider the request for the grant of the relevant Clearance and, following the grant of any such Clearance, maintain such Clearance in full force and effect so long as it is necessary in order for the Licensee to perform its obligations hereunder;
- 5.2.3. execute or cause execution of the Scope of Works & Performance Standards (as specified in **Schedule-1** of this Agreement) in accordance with the terms of this Agreement, including without limitation the conditions of Clearance, technical requirements, Applicable Laws and Good Industry Practice;
- 5.2.4. **Licensee shall ensure adherence to Minimum Development Obligations / Essential Facilities as given below:**
- (a) Licensee will be required to upgrade / renovate the property to the standards similar / equivalent to 3 stars or above category hotel as under.
- For **Shrestha Bharat Bhawan**, Licensee shall be required to bring the brand, as per the commitment letter provided by it after issuance of LoA and upgrade / renovate the same to the standards equivalent to 3 stars or above category hotel
- (b) The Licensee shall market the hotel property and provide all related services to the

guests as per the standards of 3 stars or above category.

(c) Management, Operation and Maintenance of the Hotel as per norms and guidelines equivalent / similar to 3 star or above category.

- It will include all Front office management, room services, Housekeeping, Repair & maintenance services, food and beverage services, banquet and related services. It may also include transport and logistics required, travel desks, any health club / spa services if required.

(d) The brand being brought by the Licensee shall be in place for atleast 10 years from Commercial Operation Date. Any changes in the same will only be allowed, for a comparable brand, under rare circumstances, with prior due approval of MD, SSNNL. Any such change of brand, if required, shall have to be by a brand qualifying as per Operation & Maintenance Experience criteria as given in this RFP.

- 5.2.5. subject to sub-clause 5.2.41 hereof, start Commercial Operations latest by Scheduled Commercial Operations Date, provided that the Licensee shall not be considered in breach of this sub-clause 5.2 in case non-fulfillment or delay in fulfillment of its obligations herein are caused solely by (i) the occurrence of an event of Force Majeure in accordance with **clause 10** of this Agreement or (ii) a Licensor Event of Default;
- 5.2.6. be solely responsible to operate, maintain and manage the Project Facilities in good condition for the entire License Period as per the terms & conditions of this agreement;
- 5.2.7. bear entire operation, maintenance & management expenditure including but not limited to the utility bills (water, electricity, telephone, sewage, sanitation etc.), cost of consumables, all kind of taxes, manpower cost, insurance premium towards protection of Project Facilities from fire and burglary etc. Insurance of the buildings, equipment and other assets owned by the Licensor shall be taken in name of Licensor or its nominee. **Licensor being owner the property, property tax & insurance may be borne by Licensor, however the same shall be recovered from the Licensee on actual basis;**
- 5.2.8. Licensee shall ensure that light and water connections are active and in working conditions and all outstanding dues, till the handing over of the facility, are paid. After handing over of the property, it shall be the Licensee's responsibility to pay all bills towards these usage;
- 5.2.9. have entitlement, for the entire Operation Period, to determine, demand, charge, collect, retain, appropriate and periodically revise the charges in line with the rates / charges prevailing in the market, nonetheless the same shall be decided in consultation with Authority from time to time;
- 5.2.10. appoint sufficient number of qualified and trained technical staff and other support staff like General Manager, Event Manager, Chef, Supervisors, Cooks, Front Desk, concierge, Waiters, Attendants, etc. at its own cost which would be commensurate with the volume of business generated at various point of time at all Project Facilities. While recruiting, the Licensee shall ensure that these personnel possess required qualifications and experience as prescribed by competent authorities to carry out the services. There should not be any shortage of staff at the Project Facilities at any point of time during Operation Period;
- 5.2.11. ensure that all staff are properly and presentably dressed in appropriate uniforms and work-wears (including protective clothing and foot-wears where required), as prescribed by competent authorities, maintain high standard of personal hygiene commensurate with

- their allocated tasks and wear identification badges/cards at all times while working at the Project Facilities;
- 5.2.12. ensure that only adult and skilled manpower are deployed. Employment of child labour will lead to the termination of the Agreement. The Licensee shall engage only such workers, whose antecedents and character have been thoroughly verified. Licensee shall be responsible to obtain all requisite approvals & permissions as may be necessary or required under various acts & laws for Hotels / restaurants.
 - 5.2.13. be solely responsible for all acts and actions of the staff / consultants / advisors / personnel / contract staff deployed / appointed / engaged by the Licensee at the Project Facilities and for ensuring compliance with relevant employment laws, regulations, and other statutory requirements including but not limited to salary, professional fee, provident fund, gratuity, insurance, medi-claim etc. as required under GoI / GoG laws. Licensee shall indemnify the Licensor of any liabilities that may arise with regard to the personnel deployed by Licensee to the Project. Licensor shall not have any responsibility in this respect whatsoever;
 - 5.2.14. adopt all prevailing standard, norms, practices and follow Good Industry Practices to provide testing services of good quality;
 - 5.2.15. apply and obtain license under Prevention of Food and Adulteration Act from the Local Health Authority and ensure its continuity for the entire License Period ;
 - 5.2.16. ensure that operations of Restaurant including the kitchen, stores and other food handling areas should be as per the Food Safety and Standards Act (FSSA) 2006, Food Safety and Standards Rules 2010 and various Food Safety and Standards regulations or any other regulation as applicable from time to time. The licensee shall solely be liable for any damages/ criminal liability consequent to violation of any of the provisions of FSSA, 2006 or any issue arising out of food contamination, poisoning and related issues and licensee is alone liable to all third party claims.
 - 5.2.17. The Licensee shall have to maintain high standards of cleanliness, courtesy and manners by his staff and shall set high standards of quality of food and hygiene, serving standards.
 - 5.2.18. adhere with all mandatory norms, rules, regulations, standards, as may be prescribed by Competent Authorities from time-to-time including but not limited to the Food Safety and Standard Authority of India (FSSAI);
 - 5.2.19. maintain at its own cost the equipment including those provided by Licensor in good and working condition at all times during the License Period. In case of breakdown of any equipment (malfunction or not performing up to the standard level shall also be treated as breakdown) Licensee shall get it repaired at its own cost from authorised service center of equipment manufacturer / or any other center empaneled / suggested by equipment manufacturer in such case;
 - 5.2.20. arrange for cooking gas at his own cost at all times.
 - 5.2.21. procure written approval / permission of Licensor before installation of its own equipment/ facilities at any of the Project Facilities during the License Period. Licensee shall also submit list of such equipment at the end of each quarter;
 - 5.2.22. maintain an assets movement register and also ensure that under any circumstance movable assets provided by Licensor, including equipment and furniture & fixtures, do not

- move out of the Project Facilities premises without obtaining written permission of Licensor;
- 5.2.23. identify the major equipment in consultation with the Licensor and maintain a separate log-book for such equipment to record their usage.
- 5.2.24. maintain the security arrangement on 24X7 basis at all Project Facilities and ensure safety and security of the equipment and other assets provided by the Licensor, and those procured by the Licensee at its own cost, if any;
- 5.2.25. institute, implement, and follow a quality assurance system during the License Period. The quality assurance system shall involve maintenance of appropriate records, documents and data related to O&M of the facility. The Licensor shall have the right to inspect, periodically or at random, such records, documents and data etc. and to take measures, as appropriate. The Licensee agrees to offer full co-operation at the time of such checks and inspections by Licensor and assist any independent agency or expert retained by the Licensor to carry out such checks;
- 5.2.26. ensure the adherence to performance standards and service level indicators which may be routinely monitored by the Licensor; remedial action shall be promptly taken by Licensee where such standards are not attained;
- 5.2.27. take full responsibility for the adequacy, stability and safety of the Project Facilities, irrespective of any approval or consent by the Licensor or any Competent Authority;
- 5.2.28. report to the Licensor or its nominated agency during the License Period as detailed in **clause 8** of this Agreement. Such reports shall contain such information as may be reasonably required to keep the Licensor properly informed of material matters relating to the operation, maintenance and management of the Project Facilities;
- 5.2.29. allow representatives of the Licensor or its nominated agencies full access to the Project Facilities and to all documents relating to the Project Facilities as per the provisions of this Agreement;
- 5.2.30. not abandon / suspend the operation, maintenance & management (O&M) of the Project Facilities, for a continuous period longer than 7 (seven) days without prior consent / approval of the Licensor, provided that the Licensee shall be deemed not to have suspended / abandoned operations when such suspension / abandonment is as a result of Force Majeure Event and is only for the period such Force Majeure is subsisting;
- 5.2.31. undertake clearing of any choking in the drainages, manholes, etc., removal of beehives and cobwebs / honey webs from the property and its premises, cleaning and sweeping of roof tops with brooms / mechanized sweeping, cleaning of signage. All dust bins shall be properly cleaned from in and outside and should be emptied at the end of the shifts on regular basis.
- 5.2.32. ensure collection, screening and segregation of dry and wet garbage area. Licensee shall also ensure the segregation of bio-degradable, non-bio degradable and hazardous waste. Appropriate disposal as approved by applicable authority shall be the responsibility of the Licensee. Licensee shall in no way harm the environment of the place.
- 5.2.33. collect, segregate and dispose at its expense all types of wastes, garbage generated during O&M of the Project at the Project Facilities in compliance with the Applicable Laws,

- Applicable Permits, industry norms and regulations, terms of Clearances and Good Industry Practice and shall indemnify the Licensor in this respect;
- 5.2.34. handover, upon expiry of License Period or prior termination thereof, the unencumbered possession of the Project Facilities without demur or delay and cause vacation there from of all Persons claiming through or under the Licensee;
- 5.2.35. be liable and responsible for all types of liabilities (negligence, fault, accident or otherwise) arising, accruing or resulting from the (i) operation of Project Facilities by the Licensee and (ii) purchase, presence, handling, storage, disposal etc. of all types of wastes, substances, materials and by-products as a result of its activities pursuant to this Agreement. The Licensee shall (i) buy and maintain adequate insurances against such liability and (ii) indemnify, hold and continue to hold the Licensor harmless against all such liability;
- 5.2.36. pay in a timely manner all taxes, duties, levies, cess and utilities charges in respect of the Project and its activities relating thereto including but not limited to income tax, sales tax, value added tax, excise duty, customs duty and octroi, municipal tax that may be applicable, levied, claimed or demanded from time to time by Competent Authorities including any increase therein effected or fines or penalties related thereto;
- 5.2.37. payment to be made to the Licensor by the Licensee in terms hereof, if any, shall be exclusive of all taxes, levies etc., provided however that such payment shall be subject to deduction of income tax at source for which the Licensee shall provide certificate of Tax Deducted at Source (TDS) to the Licensor. The Parties further agree that the applicable taxes, levies etc. including services tax shall be paid by Licensee separately along with the payment;
- 5.2.38. in case of Licensor making payment to Licensee in terms hereof, if any, the Licensor shall deduct income tax at source for which certificate of Tax Deducted at Source (TDS) shall be provided by Licensor to the Licensee. The Parties further agree that such payment shall be inclusive of all taxes, levies including service tax and no extra payment on such account shall be made by the Licensor to the Licensee;
- 5.2.39. pay in a timely manner the Total Annual Premium to the Licensor as per provisions of **clause 9** of this Agreement;
- 5.2.40. pay liquidated damages of 5% of the Total Annual Premium quoted per year Rs. _____ (Rupees _____ only) per week (7 days) for every week (7 days) of delay in the event of non-achievement of Commercial Operations by Scheduled Commercial Operations Date, for any reason other than Force Majeure or reasons solely attributable to the Licensor, provided that such liquidated damages do not exceed aggregate of 20% of the Total Annual Premium quoted per year Rs. _____/- (Rupees _____ Only);
- 5.2.41. in the event that Commercial Operations does not occur on or before the date as mentioned below, the Licensor shall be entitled to invoke the Performance Security and to terminate this Agreement for a Licensee Event of Default in accordance with the provisions of **clause 12** of this Agreement, provided that instead of terminating this Agreement, the Licensor may at its sole discretion extend the time for starting Commercial Operations;
- (a) for **Shrestha Bharat Bhawan**, Commercial Operations should start **on or before 1st September 2019**. All work towards Upgradation / Renovation of Shrestha Bharat Bhawan shall have to be completed before that.

- 5.2.42. be solely liable for the safety, security and protection of the customers, bonafide visitors and their property at the Project Facilities against theft, vandalism, loss, damage, destruction or otherwise and shall indemnify, defend and hold harmless the Licensor, its employees, representatives from and against all liabilities, damages, legal proceedings, claims and costs etc. in this behalf;
- 5.2.43. ensure that the restaurants operate on continuous basis throughout the License period (16 Hours a day atleast, 365 days a year and 24 Hours a day for rooms). If the Licensee fails to run it accordingly, Licensor shall issue a notice to the Licensee and cancel the agreement and forfeit the security deposit submitted.
- 5.2.44. Also, if the Licensee fails to run it accordingly, Licensor shall issue a notice to the Licensee and cancel the agreement and forfeit the Bank Guarantee submitted
- 5.2.45. The food services shall not be limited to the restaurant area only but the Licensee shall also cater to the room services as per the existing guidelines/norms of SSNNL or Ministry of Tourism, GoI or GoG. The Licensee shall prepare and serve food and beverage in the restaurant and rooms.
- 5.2.46. Guest Rooms and toilets, public areas, staff toilets, terrace, backyard and premises, etc. used by the guests / employees shall be kept clean and hygienic round the clock.
- 5.2.47. carry out remedial measures to conform to the Specifications and Standards including service level requirements / indicators. In the event remedial measures are not completed by the Licensee in conformity with the provisions of this Agreement, the Licensor shall be entitled to recover penalties from the Licensee in accordance with the provisions of **Schedule-4** of this Agreement;
- 5.2.48. installation of movable assets for entertainment of the tourists may be permitted as a part of facility to the tourist provided that such installations are confined to the area offered to the Licensor and as detailed in the Agreement anyhow the same shall be done with due permission of the Licensor.

5.3. No Breach

- 5.3.1. The Licensee shall not be considered to be in breach of its obligations relating to the Project Facilities nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
 - (a) force Majeure Events, subject to provisions of **clause 10** of this Agreement;
 - (b) The Licensor Event of Default or any other material act or omission of the Licensor in contravention of its obligations under this Agreement or a material delay, impediment, default or prevention due to or caused by the Licensor;
 - (c) Compliance with the instructions or directions of the Licensor or Steering Committee or any Competent Authority other than instructions issued as a consequence of a breach or default by the Licensee of any of its obligations hereunder.
- 5.3.2. In the event of delay due to circumstances set forth in sub-clause 5.3.1 above, the Licensee shall be relieved of its obligations to the extent of such delay and, upon written request, be

granted an extension of time equal to the period of delay, as certified by the Steering Committee/Licensors, for fulfilling its obligations relating to the Project Facilities.

6. Representations and Warranties

6.1. Representations and Warranties of Parties

6.1.1. Each Party represents and warrants to the other Party that:

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary actions, corporate or otherwise, under Applicable Laws and constitutional documents, to authorise the execution, delivery and performance of this Agreement;
- d) it has financial standing and capacity to undertake the Project;
- e) this Agreement constitutes the legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- f) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in respect thereof;
- g) it shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid;
- h) in the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or gave such warranty shall promptly notify the other of the same. However, such notification shall not be deemed to discharge the notifying Party from its respective obligation, until expressly waived in writing, by the non-notifying Party.

6.2. Additional Representations & Warranties of the Licensor

6.2.1. The Licensor further represents and warrants to the Licensee that:

- a) the Licensee shall have complete, lawful and uninterrupted possession of the Project Facilities by way of License and in accordance with this Agreement;
- b) there are no suits or other legal proceedings pending or threatened against, in respect of the Project Facilities;
- c) there is no claim, demand or any other proceeding pending before any Competent Authority in respect of the Licensor's title to and ownership and possession of the Project Facilities.

6.3. Additional Representations and Warranties of the Licensee

6.3.1. The Licensee further represents and warrants to the Licensor that:

- a) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of or constitute a default under any of the terms of the

Licensee's memorandum of association/trust deed or any Applicable Laws or any covenant, agreement understanding, decree or order to which it is party or by which it or any of its property or assets is bound or affected;

- b) there are no actions, suits, proceedings or investigations pending or, in the Licensee's knowledge, threatened against it at law or in equity before any court or any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or constitute a default of the Licensee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- c) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Licensee's ability to perform its obligations under this Agreement;
- d) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- e) no representation or warranty by the Licensee contained herein or in any other document furnished by it to the Licensor or to any Competent Authority in relation to Clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- f) the Licensee was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to accept the terms and conditions set forth in this Agreement; provided that whenever any pending or potential matter including the matters listed under sub-clauses 6.3.1 (b), (c), (d) and (e) comes to the knowledge of the Licensor, during the License Period, the outcome of which may result in the breach of or constitute a default of the Licensee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Licensee's ability to perform its obligations and duties under this Agreement, the Licensee shall immediately intimate the same to the Licensor;
- g) all rights, entitlement and interests of the Licensee in and to the Project Facilities shall pass to and vest in the Licensor or its nominated agency on the Transfer Date, free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Licensee or the Licensor and that none of Project Assets, including materials, supplies or equipment, shall be acquired by the Licensee subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person save and except as expressly provided in this Agreement.
- h) as of date, there is no applicable bankruptcy, insolvency, re-organization, moratorium or similar laws affecting creditors' rights generally;

- i) the Licensee hereby accepts the risk of inadequacy, mistake or error in or arising out of, in connection with or in relation to the matters set out in the preceding paragraphs of sub-clause 6.3 and hereby confirms that the Licensor or its agencies, advisors and consultants shall not be liable to the Licensee or any Person claiming through or under it in any manner whatsoever for the same;
- j) the Licensee has the financial standing and resources necessary for undertaking and implementing the Project in accordance with this Agreement;
- k) all information provided by the Preferred Bidder / Licensee in response to the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

6.4. Disclaimer

- 6.4.1. Without prejudice to any express provision contained in this Agreement, the Licensee acknowledges that prior to the execution of this Agreement, the Licensee has after a complete and careful examination made an independent evaluation of the Project, the legal framework and technical and financial aspects of the Project, the Specifications and Standards, the Project Facilities and the suitability of its conditions and location for O&M of the Project, the availability of goods, materials and things for O&M of the Project, all information and documents provided by the Licensor, its consultants or any Competent Authority, the market and demand conditions, information relating to Customers and the cost, risk, consequences and liabilities involved in implementing the Project, and has determined to the Licensee's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Licensee in the course of performance of its obligations hereunder.
- 6.4.2. The Licensee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause 6.4.1 above and hereby confirms that the Licensor, any Competent Authority and their consultants/advisors shall not be liable for the same in any manner whatsoever to the Licensee or Persons claiming through or under the Licensee.
- 6.4.3. The Licensee accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Licensor to the Licensee, its consultants or any Competent Authority and that it shall accept and act thereon at its own cost and risk.
- 6.4.4. The Licensee shall be solely responsible for the contents, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Licensee for implementing the Project.

7. Project Monitoring

7.1. Steering Committee

7.1.1. The Licensor may constitute a Steering Committee, prior to Scheduled Commercial Operations Date, to monitor O&M of the Project as per the provisions of the License Agreement during the License Period. The Steering Committee shall comprise of following members:

- Managing Director-SSNNL (or its nominee): **Chairperson**
- 2 Nominees of the Licensor : **Members**
- 2 Nominees of the Licensee: **Members**

7.1.2. The Committee shall hold meetings at least once in every 6 (six) months or at earlier frequency, from time-to-time as the Chairperson may decide during the License Period.

7.2. Inspections during License Period

7.2.1. Licensee shall institute, implement and follow a quality assurance system during the License Period. Third party verification for the services of the Licensee shall be done by the Licensor periodically. The quality assurance system shall involve maintenance of appropriate records, documents and data related to the Project, The Licensor shall have the right to inspect, periodically or at random, such records, documents and data etc. and to take measurements, as applicable. The Licensee agrees to offer full co-operation at the time of such checks and inspections by Licensor and assist any independent agency or expert retained by the Licensor to carry out such checks. Such inspections shall be held in the presence of the Licensor or its nominee, who shall verify the result thereof.

7.2.2. If, as a result of such inspections, the Licensor or its nominee decides that any equipment or other assets provided by the Licensor to the Licensee in terms hereof is defective or otherwise not in compliance with the Specifications and Standards and Good Industry Practices, the Licensor may notify the Licensee, with reasons, for correction of such defects within a stipulated time as mentioned in the Agreement.

7.2.3. The Licensee shall during the License Period repair / rectify the defects notified by Licensor within the stipulated time, if any, at its cost. In the event that the Licensee fails to repair or rectify such defects within a period of 30 (thirty) days (or such other longer period as may be specified by the Licensor in the notice), from the date of notice issued by the Licensor in this behalf, the Licensee shall become liable for payment of an amount equivalent to 5% of Performance Security to the Authority for each week of delay.

7.2.4. Any such inspections by the Licensor or any Competent Authority shall not relieve or absolve the Licensee of its obligations and liabilities hereunder in any manner whatsoever.

7.2.5. Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions hereof, the Licensor/ Steering Committee/

nominee of the Licensor shall during the License Period at all reasonable times have access to the Project Facilities to inspect and examine the equipment and other assets, service delivery, documents, reports, data, books, information, in order to determine compliance thereof with the provisions of this Agreement, including the Specifications and Standards and the Licensee shall provide the necessary cooperation and assistance to them in this behalf.

- 7.2.6. The Licensee shall carry out periodic, routine and preventive maintenance of the Project Facilities to prevent breakdowns of machinery, equipment and apparatus and undertake or arrange the periodic servicing and repair thereof and the replacement of spares and parts in a timely manner. The Licensee shall ensure continuous workflow and the breakdown or unavailability of machinery, equipment or materials shall not constitute a valid reason for any delay.

8. Information and Reporting Requirement

8.1. Project Information

- 8.1.1. The Licensee shall maintain separate books of accounts for the Project in the form and manner as prescribed by Competent Authority and submit quarterly progress report.

8.2. Other Information

- 8.2.1. The Licensee shall provide the following information to the Licensor promptly after becoming aware of it:
- a) Force Majeure: details of any event of Force Majeure which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent.
 - b) Litigation: details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project.
 - c) Legislation: details of contravention of any Law or regulation or with the terms of any Clearance or any litigation with customers and any fines or penalties that have or may thereby be incurred.
 - d) all penalties or notices of violation issued by any Competent Authority.
 - e) any refusal or threatened refusal to grant, renew or extend or any action pending or threatened that might affect the granting, renewal or extension of any Clearance.

8.3. Liability for Information

- 8.3.1. The Licensor shall not be required to verify the information, reports and documents provided by the Licensee and shall be entitled to rely and act on the basis thereof. The Licensee shall be liable for and shall indemnify, continue to indemnify and hold harmless the Licensor and Persons claiming through or under it from any liability, settlement and judgment, cost, expense, including reasonable attorney fees, arising out of or in connection with (i) the Licensee's failure to provide information and/or (ii) the provision of information by the Licensee that has misrepresentations, is incomplete, false or incorrect.
- 8.3.2. The submission by the Licensee to inspection and monitoring by the Experts and the Licensor or the compliance with periodic reporting requirements during the License Period under this Agreement shall not relieve or absolve the Licensee of its obligations and liabilities hereunder in any manner whatsoever

9. Total Annual Premium

9.1. Payment of Total Annual Premium

- 9.1.1. Licensee is selected on the basis of financial quote (“**Total Annual Premium**”) offered to Licensor in consideration for award of the License rights to the Licensee in terms hereof. The Total Annual Premium shall be payable as follows:
- a) Subject to terms of this Agreement, the Licensee shall pay to the Licensor **Total Annual Premium** of Rs. _____ (**Rupees _____ only**) in the form of a demand draft drawn in favour of Licensor issued by a scheduled bank payable at Gandhinagar.
 - b) From Commercial Operation date till its 3rd anniversary, the **Total Annual Premium** will be paid in advance in 4 equal Quarterly instalments. From 4th year onwards, the **Total Annual Premium** will be paid in advance on annual basis throughout the remaining License Period. The Total Annual Premium shall be escalated by 12% (twelve percent) every 3 (three) years on compounding basis from Commercial Operation Date. Taxes as applicable (including GST) shall also be payable by the Preferred Bidder.
 - c) In the event of delay on the part of the Licensee in payment of Total Annual Premium the Licensee shall be required to pay the Licensor interest thereon at the rate of 18% (eighteen percent) per annum with effect from and including the due date until the date of payment of such Total Annual Premium to the Licensor. In case any amount of Total Annual Premium remains unpaid till 120 (one hundred twenty) days from its due date, this shall constitute a Licensee Event of Default, and shall entitle the Licensor to terminate this Agreement under the provisions of **clause 12** of this Agreement.
 - d) Without prejudice to its rights at Law and herein, the Licensor may recover the delinquent amounts of the Total Annual Premium, if any, by retaining and appropriating equivalent amounts from the Performance Security, whereupon the Licensee shall be required to replenish, to its full value, the Performance Security in case of partial forfeiture or furnish a fresh Performance Security in case of complete forfeiture, as the case may be, in accordance with provisions hereof.
 - e) The License Agreement is for a period of twenty (20) years which may be extended on Authority’s decision. The provision for extension or otherwise shall be the decision of the Authority; the same shall be based on mutually agreed terms and conditions.

9.2. Responsibility of Payment of Taxes

- 9.2.1. The Parties hereby agree and confirm that payment to be made to the Licensor by the Licensee in terms hereof, if any, shall be exclusive of all taxes, levies etc., provided however that such payment shall be subject to deduction of income tax at source for which the Licensee shall provide certificate of Tax Deducted at Source (TDS) to the

Licensors. The Parties further agree that the applicable taxes, levies etc. including GST shall be paid by Licensee to Licensor/Competent Authority along with the payment.

10. Force Majeure

10.1. Force Majeure

10.1.1. A Force Majeure Event means any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or consequence(s) thereof which affect or prevent the Party (Licensor or Licensee) claiming force majeure (“**Affected Party**”) from performing its obligations, in whole or in part, under this Agreement and which event or circumstances (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such event or circumstance by exercise of reasonable efforts, skill and care or due diligence, and (iii) has Material Adverse Effect on the Project.

10.2. Force Majeure Events

10.2.1. Force Majeure Events shall mean:

- a) acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the O&M of the Project;
- b) meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at high speeds;
- c) fire or explosion, chemical or radioactive contamination or ionizing radiation caused by reasons not attributable to the Licensee or its employees or its agents;
- d) strikes, lock-outs or other industrial action or labour disputes (excluding those by the Licensee or its employees or agents or its employees or agents, in any such case employed on the O&M of the Project or the supply of goods or services to the Project) in so far as they have a Material Adverse Effect on the O&M of the Project;
- e) act of war (whether declared or undeclared), threat of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, revolution, religious strife, bombs, sabotage, terrorism or threat of such acts or other similar events of a political or social nature;
- f) political bandhs, transporter’s agitation, merchant agitation, riots, civil disturbances of any kind including civil commotion and disturbances by local bodies or people at or around the Project Facilities that have a Material Adverse Effect on the O&M of the Project; and
- g) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Licensee in any proceedings (which are non-collusive and duly prosecuted by the Licensee) for reasons other than failure of the Licensee or of any Person claiming through or under it to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or

enforcement of this Agreement or exercise of any of its rights under this Agreement by the Licensor; or

- h) any event or circumstances of a nature analogous to the foregoing;
- i) change in law;
- j) expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or rights of the Licensee relating thereto; provided the same has not resulted from an act or default of the Licensee or any Person claiming through or under it;
- k) any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Clearance required by the Licensee to perform their respective obligations hereunder; provided that such delay, modification, denial, refusal or revocation did not result from the Licensee's (i) inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits; or (ii) breach or failure in complying with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Clearances, any judgment or order or directive of any Competent Authority to which the Licensee, as the case may be, is bound.

10.3. Notice of Force Majeure Event

- 10.3.1. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("**the Notice**") as soon as the same arises or as soon as reasonably practicable and in any event **within 24 hours (Twenty Four hours)** after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- 10.3.2. The Notice shall inter-alia include full particulars of:
 - a) The nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - b) The duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
 - c) The measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage;
 - d) Any other relevant information.
- 10.3.3. So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly) written reports containing the information called for by sub-clause 10.3.2 of this Agreement and such other information as the other Party may reasonably request.

10.4. Period of Force Majeure

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

- a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with sub-clause 10.5 of this Agreement; or
- b) termination of this Agreement pursuant to sub-clause 10.10 hereof.

10.5. Performance Excused

10.5.1. The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of such obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Notwithstanding any provision of this clause 10 of this Agreement, a Force Majeure Event shall not absolve the Licensee from any obligation to make payment in respect of its obligations under this Agreement in the event such payment obligations have arisen or accrued prior to the occurrence of the Force Majeure Event.

10.6. Resumption of Performance

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

10.7. Costs, Revised Timetable

10.7.1. Costs

10.7.2. Upon occurrence of a Force Majeure Event after Compliance Date, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event.

10.7.3. Extension of Time

10.7.4. To the extent the performance of the obligations of the Affected Party is affected by the Force Majeure Event, the time period for the performance of the obligations of the Affected Party shall be extended by a similar time period on a day-to-day basis.

10.8. Consultation and Duty to Mitigate

- 10.8.1. The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure Event. Except as specifically stated to the contrary, no Party shall be relieved of its obligations under this Agreement by reasons of impossibility of performance or any other circumstance whatsoever beyond its control.

10.9. Liability for other losses, damages etc.

- 10.9.1. Save and except as expressly provided in this clause 10, neither Party hereto shall be liable in any manner whatsoever to other Party in respect of any loss, damage, cost, expense, claims, demand and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this clause 10 of this Agreement.

10.10. Termination Due to Force Majeure Event

- 10.10.1. If the Period of Force Majeure continues or is in the reasonable judgement of the Parties is likely to continue beyond 180 (one hundred and eighty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 (one hundred and eighty) days, be entitled to terminate the Agreement in which event, the provisions of clause 12 shall, to the extent expressly made applicable, apply.

11. Events of Default

Event of Default means the Licensee Event of Default or the Licensor Event of Default and/or both as the context may admit or require.

11.1. Licensor Events of Default

11.1.1. The following event, to the extent not caused by a default of the Licensee or Force Majeure, shall be considered for the purposes of this Agreement as event of default of the Licensor (“**the Licensor Event of Default**”) which, if not cured within the time period permitted, if any, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, shall provide the Licensee with the right to terminate this Agreement in accordance with clause 12 hereof:

- a) any defect in the Licensor’s title (ownership) and possession of the Project Sites/Facilities which has a Material Adverse Effect on the operation, maintenance & management (O&M) of the Project and such defect is not remedied within 30 (thirty) days of receipt of written notice from Licensee;
- b) any representation made or warranties given by the Licensor under this Agreement, is found to be false or misleading and which has Material Adverse Effect;
- c) the Licensor’s failure to make any payment to the Licensee that has fallen due under this Agreement within the time period set out herein for such payment;
- d) the Licensor fails to discharge any of its obligations towards the Licensee as set out in this Agreement

11.2. Licensee Events of Default

11.2.1. Each of the following events or circumstances, to the extent not caused by a default of the Licensor or Force Majeure, shall be considered for the purposes of this Agreement as Events of Default of the Licensee (“Licensee Event of Default”) which, if not cured within the time period permitted, if any, shall provide the Licensor, with the right to terminate this Agreement in accordance with clause 12 hereof:

- (a) “Material Breach” by the Licensee and such breach is not remedied within 30 (thirty) days of receipt of written notice from the Licensor specifying such breach and requiring the Licensee to remedy the same;
- (b) such events as have been specified as Licensee Events of Default under the provisions of this Agreement;
- (c) a breach of any express representation or warranty by the Licensee which has a Material Adverse Effect and such breach is not remedied within 30 (thirty) days of receipt of written notice from the Licensor specifying such breach and requiring the Licensee to remedy the same;
- (d) any actions or omissions attributable to Licensee, including delay on the part of the Licensee to discharge any of its obligations, that has a Material Adverse Effect

on O&M of the Project and such breach is not remedied within 30 (thirty) days of receipt of written notice from the Licensor specifying such breach and requiring the Licensee to remedy the same;

- (e) failure of the Licensee to achieve Commercial Operations in accordance with sub-clause 5.2.41 unless such failure is solely due to a Force Majeure Event or for reasons attributable to Licensor;
- (f) abandonment/suspension of operation of the Project Facilities, for a continuous period of more than 7 (seven) days without the prior consent/approval of Licensor, provided that the Licensee shall be deemed not to have suspended/abandoned operations if such suspension/abandonment was as a result of Force Majeure Event and is only for the period such Force Majeure is subsisting;
- (g) a material failure by the Licensee or its employees to operate, maintain and manage the Project Facilities in accordance with the terms and conditions of this Agreement;
- (h) a breach of the provisions of sub-clause 6.3 of this Agreement;
- (i) the Licensee creates any Encumbrances, charges or lien in favour of any Person save and except as otherwise expressly permitted under this Agreement;
- (j) the transfer pursuant to law of either (i) the rights and/or obligations of the Licensee under License Agreement or (ii) all or material parts of the assets or undertaking of the Licensee except where such transfer in the reasonable opinion of the Licensor does not affect the ability of the Licensee to perform, and the Licensee continuous to have financial and technical capability to perform the material obligations under this Agreement;
- (k) in the event a voluntary decision is made by the Licensee or orders passed by the relevant Competent Authority to wind up, terminate or dissolve the Licensee or the same occurs pursuant to the Applicable Laws;
- (l) the Licensee is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Licensee or for any of its property that has a material bearing on the Project;
- (m) the Licensee assigns this Agreement without the prior written consent of the Licensor save and except as otherwise expressly permitted under this Agreement;
- (n) the Licensee repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (o) the Licensee's failure to make any payment to the Licensor that has fallen due under this Agreement within the time period set out herein for such payment;
- (p) where there has been an audit findings with regard to severe deviations from the agreed terms mentioned in this License Agreement;
- (q) the Performance Security has been invoked, in part or entirely, and the amount appropriated in accordance with terms of the Agreement and the Licensee fails to

replenish or provide fresh Performance Security as per the provisions of clause 4 of this Agreement.

11.3. Rights of Parties

- 11.3.1. Upon the occurrence of the Licensee Event of Default, the Licensor shall without prejudice to any other rights and remedies available to it under this Agreement or law be entitled to terminate this Agreement.
- 11.3.2. Upon the occurrence of the Licensor Event of Default, the Licensee shall without prejudice to any other rights and remedies available to it under this Agreement or law be entitled to terminate this Agreement.
- 11.3.3. Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

11.4. Consultation Notice

- 11.4.1. Either Party exercising its right under sub-clause 11.3 of this Agreement, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default/s and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default/s (the “**Consultation Notice**”).

11.5. Remedial Process

- 11.5.1. Following the issue of Consultation Notice by either Party, and within a period not exceeding 30 (thirty) days (the “Cure Period”) from the issue of such notice, the Parties shall, in consultation, endeavor to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

11.6. Obligations during Cure Period

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

11.7. Revocation of Consultation Notice

- 11.7.1. If during the Cure Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in sub-clause 11.5 of this Agreement, the Consultation Notice shall be withdrawn by the Party who has issued the same.

11.8. Termination Due to Events of Default

- 11.8.1. If before the expiry of the Cure Period, the underlying Event of Default is neither cured nor waived nor the Parties have agreed upon any of the measures in accordance with sub-clause 11.5 of this Agreement, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of clause 12 of this Agreement shall, to the extent expressly made applicable, apply.

12. Termination & Expiry

12.1. Termination Procedure

12.1.1. The Party entitled to terminate this Agreement (the Licensee or the Licensor) either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party. The Termination Notice shall be of not less than 15 (fifteen) days and not ordinarily be more than 30 (thirty) days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

12.2. Obligations During Termination Period

12.2.1. During Termination Period, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed.

12.3. Requisition

12.3.1. Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, the Licensor shall by a notice in writing ("**Requisition**") call upon the Licensee to furnish the following information to enable the Licensor to estimate the outstanding liabilities/assets of the Licensee and/or to finalise the assets to be handed over to/taken over by the Licensor:

- a) the progress, stage and manner of O&M of the Project Facilities and the details of the assets and liabilities of the Licensee;
- b) data or records regarding the operation and management of the Project Facilities;
- c) any other information or records regarding Licensee and the Persons claiming through or under the Licensee, its/their business, assets and liabilities;
- d) the Licensee shall within a period of 15 (fifteen) days of receipt of Requisition furnish the particulars called for by the Licensor.

12.4. Condition Survey

12.4.1. The Licensee agrees that on the service of a Termination Notice or 90 (ninety) days prior to the expiry of the License Period by efflux of time, it shall facilitate Licensor conducting a condition survey of the Project Facilities and the Project Assets to ascertain the condition thereof, verifying compliance with the Licensee's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.

12.4.2. If, as a result of the condition survey, the Licensor observes that the Project Facilities or the Project Assets or any part thereof has/have not been operated, maintained and managed in accordance with the requirements thereof under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and expenses, take all necessary

steps to put the same in good working conditions well before the Transfer Date. In the event of Licensee's failure to do so, the Licensor shall be entitled to recover the proportionate amount out of the Performance Security.

12.5. Consequences of Termination

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

12.5.1. Handover of Assets

- a) the Licensee shall return, handover, surrender, and deliver to Licensor (or its nominated agency) the peaceful and unencumbered possession of the Project Assets and Project Facilities, in good working conditions and free from Encumbrances and encroachments including building, facilities, equipment, furniture & fixtures and other infrastructure etc. which were handed over to the Licensee by the Licensor in terms hereof on/before Compliance Date;
- b) transfer all its rights, titles and interest in or over the tangible assets and intangible assets comprised in the Project to Licensor and execute such deeds and documents as may be necessary for the said purpose and complete all legal or other formalities required in this regard at its cost;
- c) the Licensee shall be permitted to take away, at its own cost, those equipment and other movable assets which belong to and were brought/installed by the Licensee during the License Period within 10 (ten) days after the Transfer Date, to the extent it does not adversely affect the functioning of Services at site;
- d) in the event the Licensee fails to take away such objects within the stipulated time as mentioned in the Agreement, the Licensor or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Licensee notice of its intention to do so to a suitable location for safe storage. The Licensee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage;
- e) the Licensee shall handover to the Licensor or its nominated agency all documents including drawings, manuals, designs, documents, information and records relating to the Project Facilities and the Project Assets;
- f) to the extent possible assign to the Licensor or its nominated agency at the time of transfer all unexpired guarantees, warranties, insurance policies and other assets belonging to the Licensor;
- g) all proceeds of insurance claims with regard to Project Facilities shall be handed over to the Licensor or its nominated agency and the Licensee or Persons claiming through or under it shall have no claim thereon or rights thereto;
- h) the Licensor taking possession of the Project Facilities shall be deemed to be a termination of all licenses in relation to the Project Facilities;

- i) the Licensor and the Licensee shall at least 90 (ninety) days prior to the expiry of the License Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of handover of assets on the Transfer Date. During this period, the designated key personnel of the Licensor shall be associated with the operations of the Project Facilities in order to facilitate smooth takeover of the same by the Licensor on the Transfer Date;
- j) it is clarified that no liabilities of Licensee shall be taken over by the Licensor including but not limited to liabilities relating to labour and personnel related obligations of the Licensee and the Persons claiming through or under the Licensee or liabilities related to the commercial area/premises. All such labour and employees shall be the responsibility of the Licensee/such Persons even after the expiry of the License Period / prior termination of this Agreement and they shall have no claim of any type of employment or compensation from the Licensor or its nominated agency. Licensee shall indemnify the Licensor of any liabilities that may arise in this regard;
- k) on the Transfer Date the Project Facilities shall be in fair condition, subject to normal wear and tear, having regard for the life, construction, nature and use etc. thereof;
- l) if on the Transfer Date, any Person is found to be occupying the Project Facilities or any part thereof, it shall be lawful for the Licensor to secure summary eviction of such Person in accordance with the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and other applicable laws.

12.5.2. Project Agreements

The Licensee shall at the cost of the Licensor or its nominated agency transfer/assign such of the Agreements which (i) are valid and subsisting, (ii) capable of being transferred/assigned, (iii) the Licensor or its nominated agency has chosen to take over in its favour. The Licensee shall entirely at its cost, terminate all such project agreements which are not transferred/assigned to the Licensor or its nominated agency.

12.5.3. Clearances

The Licensee shall, at its cost, transfer to the Licensor or its nominated agency all such Clearances relating to the Project Facilities, which the Licensor may require and which can be legally transferred.

12.5.4. Guarantees

- a) The Licensor shall be entitled to call in, forfeit, encash and appropriate any subsisting Performance Security provided by the Licensee, if the termination is on account of a Licensee Event of Default.
- b) Upon expiry of the License Period by efflux of time, the Licensor shall return the Performance Security to the Licensee 90 (ninety) days after such expiry; provided there are no outstanding claims of the Licensor on the Licensee.

12.5.5. Transfer of Risk

Until the Transfer Date, all risks shall lie with the Licensee for loss of or damage to the whole or any part of the Project Facilities unless the loss or damage is due to Force Majeure or due to an act or omission of the Licensor in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project Facilities shall be deemed to have been transferred to and lie with the Licensor or its nominated agency.

12.5.6. Training by Licensee

On the service of a Termination Notice or 90 (ninety) days prior to the expiry of the License Period by efflux of time, the Licensee shall provide free of cost adequate training to the staff and personnel of the Licensor or its nominated agency, if so desired by the Licensor, in manning, operating and handling the systems, works, equipment, machinery, technology etc. comprised in or relating to the Project Facilities.

12.6. Termination Payments

12.6.1. In the event of Termination of the License Agreement caused due to Force Majeure Event, the Termination Payment shall be as follows:

- (i) Licensor shall return Performance Security to the Licensee after adjustment of amount payable to Licensor, if any, as on the date of Termination;
- (ii) Licensor shall return to Licensee the corresponding fraction of the Total Annual Premium after making deduction on pro-rata basis, for the period for which the Project was not operational in that particular year as per provisions of the Agreement.

12.6.2. In the event of Termination of the License Agreement caused due to Licensor's Event of Default, the Termination Payment shall be as follows:

- (i) Licensor shall return Performance Security after adjustment of amount payable to Licensor, if any, as on the date of Termination;

12.6.3. In the event of Termination of the License Agreement caused due to Licensee's Event of Default, the Termination Payment shall be as follows:

- (i) Licensor shall forfeit the Performance Security furnished by the Licensee;

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law. All rights and obligations of a Party under this Agreement, including without limitation to Termination Payment, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

13. Liability and Indemnification

13.1. Indemnification

- 13.1.1. In addition to as set forth elsewhere in this Agreement, the Licensee shall indemnify, defend, hold and continue to hold harmless the Licensor during and after the License Period from and against all liabilities, damages, losses, expenses, deaths, demands, actions, proceedings, costs, deficiencies in services and claims of any nature whatsoever, including without limitation legal fees and expenses, suffered by the Licensor or any third party as a result of or arising out of or in any way connected with the acts, omissions, negligence, nuisance, breach of this Agreement and failure to perform obligations hereunder of or by the Licensee and its employees, agents, representatives and Contractors, including without limitation:
- a) the use or violation of any copyright work or literary property or patented invention, article or appliance or intellectual property right;
 - b) in respect of the sickness, injury or death of any Person employed directly or indirectly by the Licensee and their respective employees and damage to or destruction of any property or equipment of the Licensee and their respective employees arising during or as a result of the performances or non-performance of this Agreement from any cause whatsoever;
 - c) failure of the Licensee to comply with Applicable Laws and terms of Clearances or failure in payment of taxes relating to the Licensee, their respective employees, suppliers and representatives, or non-payment of amounts due and payable by the Licensee as a result of materials or services furnished by a Third Party to the Licensee;
 - d) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Licensee or Persons claiming through or under it of the Licensee's representations and warranties herein; the Licensee's agreements, duties or obligations contained herein or the terms and conditions hereof;
 - e) disputes with Licensees or Third Parties;
 - f) any civil or criminal liability arising out of a charge/accusation of negligence in relation to the services provided by Licensee at the Project Facilities or disputes with customers and/or any other Person;
 - g) handling, storing or disposing dangerous, hazardous or toxic materials at the Project Facilities.

13.2. Risk and Liability

- 13.2.1. Except as expressly provided in this Agreement, the Licensee shall carry out and perform its rights and obligations under this Agreement and at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement.
- 13.2.2. The Licensor shall not be liable in any manner whatsoever for the obligations and liabilities incurred by the Licensee during the License Period. The Licensee shall be solely liable for any civil or criminal liability arising out of a charge/accusation of

negligence in relation to the services provided by Licensee at the Project Facilities or disputes with customers and/or any other Person.

13.3. Indirect or Consequential Losses

- 13.3.1. Subject to the provisions of this Agreement, neither Party under this Agreement shall be responsible/liable to the other party in tort, warranty, strict liability or any other legal theory for indirect, incidental, punitive, or consequential loss or damage or loss of profit resulting from the performance of obligations or the exercise of rights under or pursuant to the Agreement.

13.4. Business Risk

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

13.5. Survival

- 13.5.1. The provisions of clause 12 of this Agreement shall survive the expiry or prior termination of this Agreement/the License.

14. Insurance

14.1. Insurance Coverage of Assets

- 14.1.1. The Licensee shall during the License Period purchase and maintain or cause to be purchased and maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained to insure the Project Facilities and all related assets against risks in an adequate amount, consistent with similar facilities of the size and type of the Project (the “**Insurance Cover**”).
- 14.1.2. The Insurance Cover shall be made assignable to the Licensor and the respective insurance policies shall contain a specific stipulation to that effect. Upon the occurrence of a Licensee Event of Default, subject to the provisions herein, any and all such insurance policies and benefits thereunder shall forthwith stand transferred and assigned to the Licensor and the Licensor alone shall be entitled to receipt of any and all amounts receivable under such policies. The Licensee undertakes and covenants that it shall neither have nor claim to have any rights, title or interest to such sums.
- 14.1.3. Without limiting the generality of the foregoing, the Licensee shall, at its cost and expense, purchase and maintain or cause to be purchased and maintained during the License Period, and in case of sub-clause (a) and (b) below during the License Period, such insurances as are necessary, including but not limited to the following:
- a) comprehensive insurance for the Project Assets for their full market value or replacement cost (including fire, burglary, earthquake, riots, flood, other such calamities, standard and specific peril);
 - b) comprehensive third party liability insurance, including injury or death of Persons who may enter the Project Sites including its employees, technicians, support staff, customers, visitors, labour etc. as may be applicable;
 - c) any other insurance that may be necessary to protect the Licensee, the Persons claiming through or under it, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) and (b);
 - d) insurance of the buildings, equipment and other assets owned by the Licensor shall be taken in name of Licensor or its nominee.

14.2. Evidence of Insurance

- 14.2.1. The Licensee shall, from time to time, furnish to the Licensor copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical after they are received by the Licensee and furnish evidence to the Licensor that all premiums have been paid and that the relevant policies remain in existence.
- 14.2.2. In the event the Licensee does not maintain any Insurance Cover pursuant hereto, the

Licensor may, at its option, effect such insurance and the Licensee shall reimburse all the costs and expenses incurred in this behalf by the Licensor within 15 (fifteen) days of receipt of the Licensor's claim in respect thereof, failing which the same shall be recovered by the Licensor by exercising right of set off or from the Performance Security or otherwise. In case of such failure on the part of the Licensee, the Licensor shall not be liable for damages or claims and the Licensee shall indemnify the Licensor for and against all liabilities, costs and expenses arising out of or as a consequence of such failure.

14.3. Application of Insurance Proceeds

- 14.3.1. Unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly applied by the Licensee for the repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof, which may have been damaged or destroyed.

14.4. Insurance Companies and Waiver of Subrogation

- 14.4.1. The Licensee shall insure all insurable assets comprised in the Project Assets and/or the Project Facilities.
- 14.4.2. The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Licensee.
- 14.4.3. All insurance policies supplied by the Licensee shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Licensor and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- 14.4.4. The Licensee hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Licensor and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Licensee may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Licensee pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

15. Dispute Resolution

15.1. Dispute Resolution Mechanism

15.1.1. Any dispute, difference, controversy or claim of whatever nature regarding the validity, interpretation, O&M or the rights and obligations arising out of, or in relation to, or pursuant to, or howsoever arising under or in connection with this License between the Parties (the “**Dispute**”), and so notified by either Party to the other Party (the “**Notice of Dispute**”) shall be subject to the dispute resolution procedure set out hereinafter:

15.2. Direct Discussion between Parties

15.2.1. The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the Notice of Dispute sent by one Party to the other Party under sub-clause 15.1 hereof shall be considered an invitation for direct discussion, and it shall specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed if applicable. In the direct discussion proceedings, each Party shall be represented by officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. The discussions shall be held in Gandhinagar or such other place as may be agreed between the Parties. The Parties shall hold the direct discussions in good faith and with a view to arriving at a mutually agreed settlement and bear their respective expenses in this behalf.

15.3. Arbitration

15.3.1. In the event the Parties are unable to amicably resolve the Dispute through direct discussion under sub-clause 15.2 hereof within 30 (thirty) days of the receipt of the Notice of Dispute by the Party to which it is addressed, the Party which initiates the matter for direct discussion shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996.

15.3.2. The Arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time.

15.3.3. Any award made pursuant to this sub-clause 15.3 hereof shall be final and binding on the Parties as from the date on which it is made. The Parties agree to implement such award without delay.

15.3.4. The arbitration proceedings shall be conducted in the English language and the place of arbitration shall be Gandhinagar or such other place as may be agreed between the Parties.

15.3.5. The fees and expenses of the arbitrator/s and all other expenses of the arbitration shall be initially shared and paid by the Parties in equal proportions. The arbitrator/s may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and

expenses incurred by such Party.

- 15.3.6. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding in accordance with the Arbitration and Conciliation Act, 1996.

15.4. Performance during Dispute

- 15.4.1. Pending the submission of the Dispute to resolution under the Dispute Resolution Procedure herein, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with a decision pursuant to the Dispute Resolution Procedure. Further, this Agreement shall remain in subsistence and operation during the pendency of the Dispute and no payment due and payable to either Party shall be withheld.

16. Miscellaneous

16.1. Governing Law and Jurisdiction

16.1.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and State of Gujarat and the courts at Gandhinagar and Ahmedabad (Gujarat) shall have jurisdiction over all matters arising out of or relating to this Agreement.

16.2. Waiver & Remedies

16.2.1. The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

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

16.2.2. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.

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

16.3. Survival

16.3.1. The termination /expiry of this Agreement

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

or arising out of such termination/expiry.

16.4. Entire Agreements and Amendments

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

16.5. Notices

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

If to the Licensor: _____, _____, **Sardar Sarovar Narmada Nigam Limited** (SSNNL), Udyog Bhavan, Sector 11, Gandhinagar- 382011, Gujarat

If to the Licensee: Name _____, Position _____, _____, _____

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

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

16.6. Severability

- 16.6.1. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- 16.6.2. The Parties shall negotiate in good faith with a view to agreeing upon one or more

provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement.

16.7. No Partnership

16.7.1. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

16.8. Language

16.8.1. The language of this Agreement is English. All notices, correspondence, documentation, Designs and Drawings, design Specifications and Standards, data, test reports, certificates and information in respect of this Agreement shall be in English/Gujarati language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in English/Gujarati language.

16.9. Exclusion of Implied Warranties etc.

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

16.10. Counterparts

16.10.1. This Agreement may be executed in two counterparts, each in the like form and both when taken together shall constitute the same document.

16.11. Further Assurances

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

16.12. Remedies Cumulative

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

16.13. No Liability for Review

16.13.1. Except to the extent expressly provided in this Agreement;

- a) no review, comment or approval by the Steering Committee/Licensor /competent authorities/nominees or representatives/consultant/advisor of the Licensor of the Specifications and Standards, the Transaction Documents or documents submitted by the Licensee or its employees or agents or Persons claiming through or under the Licensee nor any observation or inspection of the operation, maintenance and management of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Licensee from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Clearances;
- b) the Licensor or any Competent Authority or the consultant, advisors, nominees or representatives of the Licensor shall not be liable to the Licensee by reason of any review, comment, approval observation or inspection referred in sub-clause (a) above and the Licensee shall indemnify them and keep them indemnified in this behalf.

16.14. Change in Law

16.14.1. In the event of a Change in Law results in a Material Adverse Effect, the Licensor or the Licensee may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such change in law. The Licensee and the Licensor shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure.

16.15. Violation of Terms

16.15.1. The Parties agree that in the event of any breach of the provisions of this Agreement, the Parties shall suffer irreparable harm and injury and damages would not be an adequate remedy and each of the Parties (at its sole discretion) shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court or arbitral forum of competent jurisdiction may deem necessary or appropriate to restrain the other Party from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including without limitation a right for damages.

16.16. Interest and Right of Set Off

16.16.1. Any sum which is due and payable under any of the provisions of this Agreement by one

party to the other shall, if the same is not paid within the time allowed for payment thereof, be deemed to be a debt owed by the Party responsible for such payment to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate specified herein, and if not specified then at the SBI Base Rate on the date sum become due plus 5%, from the due date and until the date of payment or otherwise realization thereof by the Party entitled to receive the same. Without prejudice to any other right or remedy available under this Agreement or under law, the Party entitled to receive such amount shall also have the right of set off.

16.16.2. Provided this provision for payment of interest for delayed payment shall not be deemed or construed to (i) authorise any delay in payment of any amount due by a party or (ii) be a waiver of the underlying breach of the payment obligations.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorised representatives of the Parties hereto on the day and year first above written.

<p>For and on behalf of Licensor</p> <p>Mr. _____</p> <p>Sardar Sarovar Narmada Nigam Limited (SSNNL)</p>	
<p>For and on behalf of Licensee</p> <p>Mr. _____</p> <p>_____</p>	
<p>Witness:</p> <p>1.</p> <p>2.</p> <p>3.</p>	

Place: Gandhinagar

Date: _____, 2019

Schedules to the License Agreement

Schedule- 1:
RFP, Scope of Work, Performance Standards, and Addendum to RFP

Schedule- 2:
Map of Tentative Area Being Offered and Existing Project Facilities

**Schedule- 3:
Performance Security**

(Executed Deed of Guarantee shall be enclosed here)

Schedule- 4:
Technical bid Submitted by the Licensee

Schedule- 5:
Price bid Submitted by the Licensee

Schedule- 6:
Letter Award (LoA)