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Part I – Preliminary

THIS CONCESSION AGREEMENT is entered into on this _____ day of _____ (Month), _____, 2009 at Mumbai.

BETWEEN

1. **Government of Maharashtra – Fisheries Department**, having its office at Mantralaya, Mumbai 400 021 (hereinafter referred to as the “**Concessions Authority**” or wherever relevant “**GoM**” which expression shall unless repugnant to the subject or the context include its administrators, successors and assigns) of One Part;

AND

2. M/s _____ Limited, a company incorporated under the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the subject or the context include its successors and permitted assigns and permitted substitutes subject to the provisions of this concession agreement¹) of the Other Part.

WHEREAS:

- A. The Government of Maharashtra vide G.R. no. _____ dated _____, 2007, provided for the appointment of Private Sector Developer for Modernization of the Taraporevala Aquarium located on Marine drive in Mumbai (the “Project”) on design finance ,build, operate and transfer (“DFBOT”) basis.
- B. The Concessions Authority had invited proposals by an advertisement dated 2nd February 2008 (the “Tender Notice”) for short listing of bidders for Modernization of the Taraporevala Aquarium on DFBOT basis and had short listed four bidders including, inter alia, the [consortium comprising ****, **** and **** (collectively the “Consortium”) with **** as its Lead Member].
- C. The Concessions Authority had prescribed the technical and commercial terms and conditions, and invited bids from the short listed bidders for undertaking the Project.
- D. After evaluation of the submitted proposals the Concessions Authority had accepted the proposal of the Company and issued its letter of intent No. *** dated *** (hereinafter called the “LOI”) and has entered into a Memorandum of Understanding (“MOU”) dated ____ with the Company (a copy whereof is annexed as Schedule I) specifying inter alia the obligation of the Parties and signing of the Concession Agreement within 30 (thirty) days of the issuance of LOI.
- E. The Consortium has since promoted and incorporated the Concessionaire as a limited liability company, registered in Maharashtra, under the Companies Act, 1956, and has requested the Concessions Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOI, including the obligation to enter into this Concession Agreement pursuant to the LOI for executing the Project.
- F. By its letter dated ***, the Concessionaire has also joined in the said request of the Consortium to the Concessions Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights and obligations of the Consortium including the obligation to enter into this Concession Agreement pursuant to the LOI.

¹ Explanation: In case the company is merged with some other company or is taken over by any other company, or rights of the company are assigned to some other company, or any substitute is appointed or according to the opinion of Government of Maharashtra, there is change in management then this concession agreement may get terminated as per the provisions of this agreement.

- G. The Concessing Authority has agreed to the said request of the Consortium and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DFBOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS CONCESSION AGREEMENT, THE SUFFICIENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE CONCESSIONING AUTHORITY AND THE CONCESSIONAIRE (HEREINAFTER REFERRED TO AS "PARTIES" AND INDIVIDUALLY AS "PARTY") HEREBY AGREE AND THIS AGREEMENT WITNESSTH AS FOLLOWS:

Article 1 - Definitions and Interpretation

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, 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.:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Aquarium” or **“Taraporewala Aquarium”** means the existing Second Generation Aquarium and the Modern Aquarium proposed to be built in accordance with the Scope of Work set out in this Agreement;

“Aquarium Activities” shall have the meaning set forth in Clause 2.1.2 and which activities are detailed in Schedule I;

“Affected Party” shall have the meaning set forth in Clause 19.1;

“Agreement” or **“Concession Agreement”** means this Agreement, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, 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 during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, building and planning permissions, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws in connection with providing services as per the Scope of work during the subsistence of this Agreement;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Bid” means the documents in their entirety comprised in the bid submitted by the Concessionaire in response to the Tender Notice in accordance with the provisions thereof;

“COD” or **“Commercial Operation Date”** shall mean the date on which the Concessions Authority has issued the Completion Certificate and shall have the meaning set forth in Clause 12.2;

“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 bidder company according to the opinion of the Concessions Authority;

“Company” means the Company acting as the Concessionaire under this Agreement;

“Completion Certificate” shall mean the certificate issued by the Concessions Authority certifying completion of facilities by the Concessionaire to start the Aquarium operations as mentioned in this agreement having quality standards as specified under this Agreement and shall have the meaning set forth in Clause 12.2;

“Completion Date” shall unless extended by the Concessionaire in writing, mean [•] (date) or the period of [•] months from the Effective Date, whichever is earlier;

“**Commercial Operations**” shall mean and include Aquarium and Non-aquarium activities;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Concession Fee**” shall mean a fee payable monthly by the Concessionaire to the Concessions Authority for grant of the Concession as specified in Clause 3.3 to this Concession Agreement;

“**Concession Period**” means the period starting on and from the Effective Date and ending with the Transfer Date;

“**Concessionaire Default**” shall have the meaning set forth in Article 20.1;

“**Concessionaire rights**” means the rights obtained by the Concessionaire as per the Scope of Work given in Article 2 of this Agreement, rights as per the Detailed Business Plan and any other rights expressly mentioned as per this Concession Agreement;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1;

“**Consideration**” shall have the meaning set forth in Clause 3.1.1;

“**Construction**” shall mean and includes investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities that are to be completed on or before Commercial Operation Date;

“**Damages**” shall have the meaning set forth in sub-clause (s) of Clause 1.2;

“**Dispute**” shall have the meaning set forth in Clause 26.1.1;

“**Detailed Business Plan**” shall mean the plan submitted by the Concessionaire for the design, finance, construction, operation and maintenance of the Taraporewala Aquarium in accordance with the Scope of Work and provided in Schedule B.

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 26;

“**Effective Date**” means the date on which all the Conditions Precedent are satisfied or waived as per Article 4 of the Concession Agreement in writing by both the Parties;

“**Encumbrance**” 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 such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities or this Concession Agreement;

“**Escrow Account**” means an Account which the Concessions Authority shall open and maintain with a Bank to deposit termination amount or any amount during Suspension as the case may be and shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement;

“**Financial Close**” shall have the meaning ascribed to it in Article 15;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Article 19;

“**GOF**” means the Government of India;

“**GOM**” means the Government of Maharashtra;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Scheduled Land or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Gross Revenue” means the total revenue of the Concessionaire before the deduction of Taxes;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 25;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 25;

“Maintenance Manual” shall mean and include the particulars as detailed in Schedule F

“Maintenance Programme” shall mean and include the particulars as detailed in Schedule E

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of the Concessionaire to perform any of its obligations according to the provisions of this Agreement;

“Material Breach” means the grounds specified in Clause 22.2 providing sufficient grounds for immediate Termination;

“Modern Aquarium” means all part of the Aquarium except the Second Generation Aquarium as given in the Detailed Business Plan enclosed as Schedule B;

“Non-aquarium Activities” shall have the meaning set forth in clause 2.1.3 and which activities are detailed in Schedule J;

“Nominated Concessionaire” means the new entity replacing the existing Concessionaire on the date of transfer;

“O&M” means the operation and maintenance of the Aquarium by the Concessioneing Authority and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of income;

“Operation Period” shall mean and include the period for Commercial Operations;

“Outstanding Secured Debt” means the outstanding debt as per the latest loan account statement from the senior lenders to the extent it has been utilized towards this project that shall be verified by an independent auditor appointed by the Concessioneing Authority;

“person” shall mean and include any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;

“Project Cost” shall be an amount quoted by the Bidder and approved by the Concessioneing Authority but shall not be an amount less than Rs. 100 crores;

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

“**Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Project Assets**” shall mean the Aquarium in operational conditions along with Non-aquarium Activities area with necessary infrastructure as per the Scope of Work mentioned under Article 2;

“**Rs.**” or “**Rupees**” refers to the lawful currency of the Republic of India;

“**Safety Requirements**” shall mean and include the particulars as detailed in Schedule G

“**Second Generation Aquarium**” means the part of the Aquarium as given in the Detailed Business Plan enclosed as Schedule B;

“**Scheduled Land**” shall mean the land area admeasuring 4369.05 square meters specified in Schedule A and further particulars described in Schedule H to this Agreement;

“**Scope of Work**” shall have the meaning as ascribed to it in Article 2 of this Agreement and include the Detailed Business Plan as approved by the Concessions Authority and annexed to this Agreement in Schedule B;

“**Service Level Parameters**” shall mean the parameters for the performance of the Construction and operation of the Aquarium as specified by the Concessions Authority and annexed hereto as Schedule D;

“**Special Purpose Vehicle**” shall mean Company incorporated under the Companies Act, 1956 by the Concessionaire for the sole purpose of undertaking the Project;

“**Tax**” or “**Taxes**” shall mean any and all taxes, levies, imposts, duties, charges, fees, deductions or withholdings that are, or that are to be, imposed, levied, collected, withheld or assessed, together with any and all interest, penalties, claims or other liabilities arising under or relating thereto;

“**Termination**” means the expiry or termination of this Agreement and the Concession hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Transfer Date**” means the date of Termination of this Concession Agreement;

“**User Charges**” shall have the meaning ascribed to it in Clause 16.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- (d) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (e) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (f) any reference to day shall mean a reference to a calendar day;
- (g) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which nationalized banks in Mumbai are generally open for business;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date, period or milestone shall mean and include such date, period or milestone as may be extended pursuant 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) the words importing singular shall include plural and vice versa;
- (l) references to any gender shall include the other and the neutral gender;
- (m) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (n) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (o) any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Concessioneing Authority hereunder or pursuant hereto in any manner whatsoever;
- (p) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or person appointed shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the person appointed as, as the case may be, in this behalf and not otherwise;
- (q) the Schedules and Recitals 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;
- (r) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference

to a Paragraph of this Agreement or of the Schedule in which such reference appears; and

- (s) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Concessions Authority and/or the agency or person appointed by the Concessions Authority shall be provided free of cost and in two copies, and if the Concessions Authority and/or the person appointed by the Concessions Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the 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.

1.4 Priority of Agreements and Errors/Discrepancies

1.4.1 This Agreement, and all other agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof;
 - i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more clauses of this Agreement, the provisions of a specific clause relevant to the issue under consideration shall prevail over those in other clauses;
- (b) between the clauses of this agreement and the Schedules, the clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

- (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; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

Part II

CONCESSION

Article 2 - Scope of Work

- 2.1** The Concessionaire has submitted a Detailed Business Plan for the Aquarium which has been approved by the Concessioneing Authority and the same is enclosed as Schedule B to this Agreement and forms part of this Agreement. The Concessionaire shall design, finance, build and operate the Aquarium as per the Detailed Business Plan approved by the Concessioneing Authority and which are specifically set out in Schedules B to G. The Scope of Work shall mean:
- 2.1.1 the Construction of the Aquarium on the Scheduled Land in accordance with Schedule(s) B, D, E, F and G of this Agreement;
 - 2.1.2 the operation and maintenance of the Aquarium (“Aquarium activities”) in accordance with Schedule I of this Agreement;
 - 2.1.3 the operation and maintenance of the Aquarium theme based commercial activities (“**Non-aquarium Activities**”) in accordance with Schedule J of this Agreement; and
 - 2.1.4 the performance and fulfillment of all other obligations of Concessionaire in accordance with this Agreement.
- 2.2** Any variation in the Scope of Work subsequent to the Effective Date, except in respect of matters of sovereign right of the Concessioneing Authority, shall be subject to the Applicable Law and/or mutual agreement of the Parties.

Article 3 - Grant of Concession

3.1 Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, rules and regulations and the Applicable Permits, Concessioneing Authority in lieu of the Scope of Work hereby grants the aforesated Concession to the Concessionaire - the possession of the Scheduled Land for the Concession Period of [●] years for the purpose of:

- I. Construction and development of Aquarium;
- II. Development of an area to the maximum extent of ____% of the total built up area in the Aquarium for purpose of **Non-aquarium activities**.

Under following terms and conditions;

- (a) FSI shall not be more than 4 and building plan for the project should be as per the approved planning permissions and in terms of the approved building plans.
- (b) Concessionaire shall comply with all Applicable Laws and the Applicable Permits, including the prevailing Development Control Regulation (DCR) of MCGM (Municipal Corporation of Greater Mumbai).
- (c) Construction of the project shall be as per the rules, regulations and norms in force pertaining to protection of Environment, Government of India, with relevance to activities in the Coastal Regulation Zone (CRZ).
- (d) Commercial area shall not be more than ___% of the total built up area. All the Non-aquarium activities provided in the Aquarium shall be based on Aquarium theme. The facilities for the Non-aquarium activities shall be constructed as per Schedule J and approved by the Concessioneing Authority. The Detailed Business Plan submitted by the Concessionaire cannot be changed without prior approval of the Concessioneing Authority. The Concessionaire is prohibited from carrying out any Non-aquarium Activities in the Aquarium which is not permitted under the Applicable Laws and Applicable Permits and which is not related to the theme of public Aquarium.
- (e) Operations under the Non-aquarium activities shall be allowed only if the Aquarium is under operations and is open for public use. The visitors shall be allowed to visit all the parts of the aquarium, where any Non-aquarium activities are being undertaken and no barriers shall be created which give any differential treatment to one visitor from another. However, the Concessionaire shall have right to collect separate user charges for the Modern Aquarium and the Second Generation Aquarium.
- (f) The Concessionaire shall complete the Construction of the Project within the Completion Date;
- (g) The Concessionaire shall not create any Encumbrance on the Scheduled Land granted to him or create any third party rights on the Scheduled Land. However, the Concessionaire can create any Security Interest or third party rights only for the Concession Period on the Construction made in the Aquarium and infrastructure created for operating the aquarium including any infrastructure provided on the Non-aquarium activities area. But in case of Termination, Clause 22.4 shall be applicable. Notwithstanding anything contained herein, the

Concessionaire, shall not create any Encumbrance which is in derogation or contrary to any of the terms of this Agreement or the rights of the Concessions Authority as provided herein.

(h) All duties, charges, fees, costs and expenses related to any stamp duties, registration shall be borne and paid by the Concessionaire.

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Non- exclusive possession and access to the extent conferred by the provisions of this Agreement;
- (b) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement including Construction of the Aquarium;
- (c) manage, operate and maintain the Aquarium and regulate the use thereof;
- (d) demand, collect and appropriate charges from visitors and users liable for payment of charges for using or visiting any facility or any part thereof and refuse entry of any person if the charges due is not paid;
- (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (f) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, save and except as expressly permitted by this Agreement.

3.1.2 In consideration of the mutual covenants by the Government of Maharashtra and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the consideration granted and agrees to Design, Finance, Build, Operate and Transfer Taraporevala Aquarium as per the Detailed Business Plan mentioned in Article 2 of this agreement and to perform/discharge the Scope of Work and all of its obligations in accordance with the provisions hereof.

3.2 Golden Share

The Concessions Authority shall be allotted and issued one share (the "Golden Share") in the share capital of the Concessionaire in the name of [•], Department of Fisheries, Government of Maharashtra or in the name of such other person/authority as it deems fit. Such Golden Share shall entitle the Concessions Authority to exercise such rights as are set out in the Memorandum of Association and Articles of Association of the Concessionaire,

3.3 Concession Fee

3.3.1 In consideration for the grant of Concession under this Concession Agreement, the Concessionaire shall, with effect from the Effective Date and during the Concession Period pay to the Concessions Authority a Concession Fee on a monthly basis being equal to an amount of 3% of the Gross Revenue of the Concessionaire.

3.3.2 The Concession Fee shall be calculated and paid in Rupees by the Concessionaire to the Concessions Authority in advance on 15th of each month and shall be

deposited in the designated bank account of the Concessions Authority, details of which will be provided by Concessions Authority to the Concessionaire from time to time;

- 3.3.3 In the event of delay up to four weeks in payment of the Concession Fee by the Concessionaire, the Concessionaire shall be required to pay to Concessions Authority an interest at the rate of Prime Lending Rate of State Bank of India prevailing on the date of the last day of the fourth week + 2% per annum.

3.4 Concession Period in Case of early Termination

The Concession hereby granted is for a period of [•] years from the Effective Date,(the “Concession Period”), provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Transfer Date.

3.5 Renewal of Concession

At least eighteen months before the end of the Concession Period, the Concessions Authority shall call for fresh tender for selection of an agency for the operation, maintenance and management of the project. The Concessionaire shall get the first right of refusal to match the best offer only if the Concessionaire’s offer is within 15% of the winning bidders offer. However, in case the Concessionaire does not exercise the right to match the best offer, the Concessionaire shall give all the necessary training, transfer the technology required for operations and transfer the information system to the Nominated Concessionaire.

Article 4 - Conditions Precedent to the Agreement

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 10, 15, 19, 26 and 29, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Concessions Authority in accordance with Article 9, at any time after 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to the Concessions Authority, by notice require the Concessions Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, and the obligations of the Concessions Authority hereunder shall be deemed to have been performed when the Concessions Authority gives peaceful possession of the Scheduled Land to the Concessionaire.
- 4.1.3 Concessionaire shall satisfy the Conditions Precedent within 120 (One Hundred and Twenty) days from the date the Concessions Authority satisfies all the conditions mentioned under Article 4.1.2 and all the Conditions Precedent shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) achieved Financial Close and has executed the financing agreements and delivered to the Concessions Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (b) procured all the Applicable Permits unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (c) delivered to the Concessions Authority from the Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
 - (d) delivered to the Concessions Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

4.2 Compliance Certificate

- 4.2.1 The Concessionaire shall notify the Concessions Authority in writing on the progress made in satisfying the Conditions Precedent. The Concessionaire shall promptly inform the Concessions Authority when any Condition Precedent for which it is responsible has been satisfied.
- 4.2.2 Upon fulfillment of all the Conditions Precedent, the Concessionaire shall forthwith issue a Compliance Certificate in the format prescribed in Schedule C to this Agreement, pursuant to which the obligations of the Concessionaire under this Agreement shall commence.

4.3 Non-Fulfillment of the Conditions Precedent.

- 4.3.1 Notwithstanding anything contained hereinbelow, the Concessions Authority, may at its sole discretion, decide to extend the time period for the fulfillment of the Conditions Precedent, but in no event shall the term for the fulfillment of the Conditions Precedent be extended beyond [•] days / months.
- 4.3.2 In the event of failure by the Concessionaire to procure compliance of any of the Conditions Precedent as per the provisions of Article 4 and the Concessions Authority not having waived any of the conditions (partially or absolutely), the Agreement shall cease to have any effect as of that date.
- 4.3.3 In the event of the Agreement not coming into effect on account of the Concessionaire not fulfilling the Conditions Precedent then the Concessionaire shall forfeit the Performance Security.
- 4.3.4 In the event of the Agreement not coming into effect on account of the Concessions Authority not fulfilling the Conditions Precedent specified in clause 4.1.2 the Performance Security shall be returned to the Concessionaire within a period as may be mutually agreed upon by the Parties. The Concessions Authority shall not be liable to pay interest or any additional amount(s) on the Performance Security. The Concessions Authority shall not be liable to any third parties, contractors or employees of the Concessionaire.

Article 5 – Obligations of the Concessionaire

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, finance, build, operate and transfer of the Aquarium as mentioned under Article 2 and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 The Concessionaire shall execute the Scope of Work in terms of this Agreement which cannot be changed without prior approval of the Concessioneing Authority.
- 5.1.4 The Concessionaire shall discharge its obligations in accordance with the Service Level Parameters as provided in Schedule D.
- 5.1.5 The Concessionaire shall appoint one representative as nominated by Concessioneing Authority as a director as per the provisions of Clause 3.2 of this Concession Agreement.
- 5.1.6 The Concessionaire shall employ the existing staff of the Aquarium if the staff so desires.
- 5.1.7 The Concessionaire shall provide rent free furnished office space of 300 square meters in the Aquarium for an Independent Agency appointed by the Concessioneing Authority. All electricity and incidental expenses on the maintenance of the office space provided to the Concessioneing Authority shall be borne by the Concessionaire.
- 5.1.8 The Concessionaire shall not change the present name of Taraporewala Aquarium and the Aquarium shall continue to be named as Taraporewala Aquarium.
- 5.1.9 Without prejudice to Clauses 5.1.1, 5.1.2 and 5.1.3 above the Concessionaire shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:
- (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into development of Aquarium;

- (c) comply with the Service Level Parameters as enumerated in Schedule D.
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of the its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) shall not commence operations unless the Completion Certificate is issued by the Concessioneing Authority;
- (h) support, cooperate with and facilitate the Concessioneing Authority and any other agent appointed by the Concessioneing Authority in providing data regarding the, number of visitors, annual report and any other details, which may be required by the Concessioneing Authority in accordance with the provisions of this Agreement;
- (i) make payment towards any of the services used in the premises to the appropriate agency within the stipulated time period; and
- (j) transfer the Scheduled Land and the Aquarium to the Concessioneing Authority upon Termination of this Agreement in the condition which is not materially inferior as compared to its condition at the date of start of Commercial Operations, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof.
- (k) make timely payment of the Concession Fee to the Concessioneing Authority on a monthly basis for the entire term of the Concession Period.
- (l) obtain approval of the Detailed Business Plan as provided in Schedule B from the Concessioneing Authority;
- (m) not enter into any sub-lease/sub-letting arrangement with any third party and if any leave and license agreement is to be entered into then the same shall be done with prior approval of the Concessioneing Authority;
- (n) not enter into any agreement with contractors except vide a tripartite agreement between the said contractor, the Concessionaire and the Concessioneing Authority;
- (o) maintain minimum levels of equity as prescribed in the Concession Agreement for the Lead Member and the Technical Partner;
- (p) acquire species to be provided in the Aquarium in accordance with the provisions of Wildlife Protection Act of 1972 and any applicable international conventions;
- (q) not acquire or transfer any animals or aquatic life forms except with the previous permission of the concerned Authority; and
- (r) make all necessary arrangements for the breeding of species of aquatic life forms.

5.2 Obligation to pay Taxes

All Taxes as may be due and payable by the Concessionaire pursuant to Applicable Laws, shall be paid on a priority basis as and when they accrue and become payable.

5.3 Obligations relating to Other Agreements

5.3.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Concessionaire from its obligations or liability hereunder.

The Concessionaire may undertake development of Aquarium by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the requirements as mentioned under Article 2.

5.3.2 During the Concession Period, the Concessionaire shall have right to enter agreements for operation, maintenance and management of various Aquarium facilities and to sublease, sublet or create leave and license agreements for part of the non-aquarium area, in form and substance as approved by the Concessions Authority and as per the Detailed Business Plan. The Concessionaire shall make the Concessions Authority a confirming party to all such agreements. However, any liability under such agreements shall be of the Concessionaire and Concessionaire shall always indemnify Concessions Authority towards all liability arising out of these agreements.

The Concessions Authority shall give permission to such agreements, except under the following circumstances:

1. The Agreement are not in form and substance as approved by the Concessions Authority;
2. If the commercial space under the agreement is subleased, sublet or created leave and license agreement for the purposes other than as specified in the Detailed Business Plan; and
3. If according to the opinion of the Concessions Authority, the party signing the agreement with the Concessionaire may result into adversely affecting the implementation of the Concession Agreement.
4. If according to the opinion of the Concessions Authority, the entity signing the agreement with the Concessionaire or the promoter/director/partner of the party is facing any serious criminal charges where the punishment for such charges as per Indian Penal Code, 1860 is likely to be imprisonment for more than 3 years, or is a willful defaulter as per the Reserve Bank of India (RBI) or has conducted financial malpractices in the past which has been proved by a competent court.

- 5.3.3 The Concessionaire shall not make any replacement or amendments to any of the Agreements without the prior written consent of the Concessions Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any liability or obligation on the Concessions Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Concessions Authority.
- 5.3.4 The Concessionaire shall ensure that each of the agreements related with Aquarium contains provisions that entitle the Concessions Authority to replace the Concessionaire with some other operator, in its sole discretion, in substitution of the Concessionaire in the event of Termination or suspension as per the provisions of this Agreement and the Concessions Authority shall have right to discontinue any agreement entered by the Concessionaire with any third party. Concessions Authority shall not be responsible for any payment to any third party.

5.4 Obligations relating to Change in Ownership of the Company

- 5.4.1 In case of a Consortium, the Lead Member of the Consortium shall at all times during the Concession Period hold not less than 26% stake in the SPV and the Technical Partner shall hold not less than 10% stake in the SPV. The Lead Member cannot be changed during the Concession Period.
- 5.4.2 The Concessionaire shall not undertake or permit any Change in Ownership of the company, except with the prior written approval of the Concessions Authority. In case there is Change in Ownership due to any event under the control or beyond the control of the present management of the company then, the Concessions Authority will have the right to terminate the Concession Agreement, immediately after such Change in Ownership, without payment of any damages for the cost incurred for setting up Aquarium.

Article 6 – Obligations of the Concessioneing Authority

6.1 Obligations of the Concessioneing Authority

- 6.1.1 The Authority shall, at its own cost and expense undertakes, comply with and perform all its obligations set out in this Agreement or arising hereunder in consultation with State Finance/Planning Department and State PPP Nodal Officer.
- 6.1.2 The Concessioneing Authority agrees to provide support to the Concessioneaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessioneaire, and subject to the Concessioneaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessioneaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (b) upon written request from the Concessioneaire, assist the Concessioneaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessioneaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers are erected or placed on the site by the Concessioneing Authority, by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency or national security, law;
 - (d) ensure that, in the event the Concessioneaire is obstructed by any person claiming any right, title or interest over the site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the such are mentioned or any part thereof, the Concessioneing Authority shall, if called upon by the Concessioneaire, defend such claims and proceedings and also keep the Concessioneaire indemnified against any consequential loss or damages which the Concessioneaire may suffer, on account of any such right, title, interest or charge.
 - (e) subject to and in accordance with the Applicable Laws, grant to the Concessioneaire the authority to regulate traffic in the Aquarium premises;
 - (f) assist the Concessioneaire in procuring Police assistance for regulation of movement of people in the Aquarium area and for security of the Aquarium;
 - (g) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
 - (h) support, cooperate with and facilitate the Concessioneaire in the implementation and operation of the services in accordance with the provisions of this Agreement.

Article 7 – Representations and Warranties

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessing Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the activities contemplated herein;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it or any of the members of the Consortium, at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its or any of the members of the Consortium's ability to perform any of the obligations under this Agreement;
- (i) it or any of the members of the Consortium have no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its or any of the members of the Consortium's ability to perform the obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of the obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) The lead promoters shall not hold less than 50% (fifty percent) equity till the period of 5 years from the commencement of operation in the Special Purpose Vehicle (SPV) or till the three years from the commencement of operation in the Special Purpose Vehicle (SPV). The Technical Partner may be allowed to sell the whole or part of its equity stake, after a

minimum holding period of 5 (five) years only with the prior approval of the Concessions Authority. Provided that the incoming Technical Partner shall be approved by the Concessions Authority and shall continue to hold not less than 10% stake in the SPV. Permission shall not be denied by the Concessions Authority unless in the opinion of the Concessions Authority, such sale of stake may affect the performance of this Agreement or the operations of the Aquarium.

- (l) the Consortium Members and their associates have the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) each Consortium Member is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Construction made in the Aquarium and infrastructure created for operating the Aquarium including any infrastructure provided on the Non-aquarium Activities area shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all liens, security interest, claims and Encumbrances, without any further act or deed on its part or that of the Concessions Authority. Concessionaire shall not create any Security Interest, on the Construction made on the site, with any entity which can affect the performance of Article [●] of this Agreement
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Concessions Authority or to any Government Instrumentality in relation to Applicable Permits 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; and
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessions Authority in connection therewith.
- (q) shall at all times in carrying out the Scope of Work use high quality materials and equipment.
- (r) at no time may the employees of the Concessionaire claim to be employees of the Concessions Authority and claim any benefits that may be available to the employees of the Concessions Authority.
- (s) ensure that the Taraporewala Aquarium is made available for research activities upon request by any research / educational institution / organization and / or any governmental or local authority.
- (t) it has satisfied itself about the nature of the Scheduled Land, risk of injury, right of access, risk of interference by third parties and any other matter in connection with the Scheduled Land.
- (u) not claim any property rights or question the title of the Concessions Authority in relation to the Scheduled Land on the Termination of the Concession Agreement.

7.2 Representations and Warranties of the Concessions Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all

actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

- (b) it has taken all necessary action under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement in consultation with State Finance/Planning Department and State PPP Nodal Officer;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against the Concessions Authority except in so far as the enforceability may be limited by laws of general application governing bankruptcy, insolvency, re-organisation or affecting the enforcement of the rights of creditors, or other applicable law or by the application of general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity) in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Concessions Authority's ability to perform its obligations under this Agreement;
- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by it in the tender notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (i) it has good and valid right to the exchange building, customer service office and also the path on which cable is laid, and has power and authority to grant the Concessionaire the right to use the existing infrastructure; and
- (j) upon the Concessionaire performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful enjoyment by the Concessionaire of the infrastructure provided by the Concessions Authority, in accordance with the provisions of this Agreement.

7.3 Disclosure

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

Article 8 - DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the tender notice, Scope of Work to be provided, specifications and standards set for providing the services, local conditions, possible demand and all information provided by the Concessions Authority, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Concessions Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessions Authority in this regard.
- 8.1.2 Notwithstanding the provisions contained in this Agreement no representation or warranty has been made by the Concessions Authority nor its representatives as regards the:
- a. adequacy of the documentation or any other records delivered to the Concessionaire;
 - b. any implied warranty arising from course of performance, course of dealing or usage of trade; and
 - c. any other representation or warranty whatsoever, express or implied all of which are expressly excluded and extinguished.
- 8.1.3 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Concessions Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members and their associates or any person claiming through or under the Concessionaire.
- 8.1.4 This is the Draft Concession Agreement and the Concessions Authority shall have the right to incorporate necessary changes in the Agreement at any time before the signing of the Agreement.

PART III – DEVELOPMENT AND OPERATIONS

Article 9 - PERFORMANCE SECURITY

9.1 Performance Security

Before taking possession of the site for the period of concession, for the due and punctual performance of its obligations under this Agreement during the Concession Period, the Earnest Money Deposit of Concessionaire of the amount of Rs 2,50,00,000 (Rupees Two Crores and Fifty Lakhs Only) shall be converted into Performance Security which shall remain in form of demand draft till the commencement of Construction after which the Concessionaire shall provide irrevocable and unconditional Performance Security in form of Bank Guarantee in favor of Government of Maharashtra for an amount equal to 5% of the Project Cost and the EMD in form of demand draft shall be returned to the Concessionaire within 15 days of the receipt of the Performance Security in form of Bank Guarantee. Bank Guarantee shall be given from any Nationalised Bank or Scheduled Indian Bank whose Networth is more than Rs. 100 crore. The Concessioning Authority would prefer the Bank Guarantee of a Nationalised (Indian) Bank. However, Bank Guarantee from any Schedule Indian Bank would be acceptable subject to the verification and satisfaction of the Concessioning Authority. The Performance Security in form of Bank Guarantee shall remain in force and effect for the entire Concession period.

Upon expiry of the existing Bank Guarantees, the Concessionaire shall be liable to furnish fresh Bank Guarantee's during the pendency of the Concession Agreement at least three weeks prior to the expiry of the existing Bank Guarantee.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or a Material Breach, the Concessioning Authority shall without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Concessioning Authority shall be entitled to terminate this Agreement in accordance with Clause 22.1.

9.3 Release of Performance Security

The Performance Security in form of Bank Guarantee shall remain in force and effect for the entire Concession Period. At the end of the Concession, the Performance Security shall be released. If the Concession Agreement is terminated due to any event other than a Concessionaire Default, the Performance Security shall, subject to the Concessioning Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

Article 10– Access and Right of Way

10.1 Scheduled Land

The Concessions Authority shall handover the Scheduled Land to Concessionaire for its benefit according to the provisions of this Agreement. The Concessionaire can take possession of the Scheduled Land in order to perform its obligations after providing the Performance Security as mentioned in Article 9.1 and signing the Concession Agreement.

10.2 Access

10.2.1 The Concessions Authority hereby grants to the Concessionaire access to the Scheduled Land for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Construction period, it being expressly agreed and understood that the Concessions Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Scheduled Land pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of this Agreement and the covenants and warranties on the part of the Concessionaire herein, the Concessions Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Effective Date, leave and license rights in respect of all the land (along with any buildings, Constructions or immovable assets, if any, thereon) comprising the Scheduled Land which is described, delineated and shown in Schedule-A hereto (the “Licensed Premises”), on an “as is where basis”, free of any Encumbrances, to operate and maintain the aquarium on the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Concessions Authority to terminate the licence, upon the Termination of this Agreement.

10.2.4 It is being expressly agreed and understood that the Concessions Authority shall have no liability whatsoever in respect of survey and investigations carried out or work undertaken by the Concessionaire pursuant hereto in the event of Termination or otherwise.

10.2.5 *Access to the Concessions Authority and any person appointed by the Concessions Authority*

The right of way and right to use the Scheduled Land hereunder shall always be subject to the right of access of the Concessions Authority and the person appointed by the

Concessions Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.3 Protection of Scheduled Land from encroachments

During the Concession Period, the Concessionaire shall protect the Scheduled Land from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Scheduled Land or the Project assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

Article 11 – Construction on the Scheduled Land

11.1 Obligations prior to the commencement of Construction

Prior to commencement of Construction, the Concessionaire shall:

- (a) submit to the Concessions Authority its Detailed Business Plan, methodology, quality assurance procedures, and the procurement, engineering and time schedule for completion as further detailed in Schedule(s) B, D, E, F and G which shall be approved before the start of Construction of the Aquarium;
- (b) appoint its representative duly authorized to deal with the Concessions Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

11.2 Obligations during the Construction Period

11.2.1 *Monthly progress reports*

During the Construction period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Concessions Authority a monthly report on progress of the Construction and shall promptly give such other relevant information as may be required by the Concessions Authority.

11.2.2 *Delays during Construction*

If the Concessionaire does not achieve any of the project milestones as enumerated in the Detailed Business Plan and that the rate of progress of Construction is such that project completion is not likely to be achieved by the Completion Date, it shall notify the Concessions Authority to this effect, and the Concessionaire shall, by a communication inform the Concessions Authority reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Completion Date.

11.2.3 *Suspension of unsafe Construction*

The Concessions Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction if, in the reasonable opinion of the Concessions Authority, such work threatens the safety of the users and pedestrians. The Concessionaire shall suspend the Construction or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon carry out remedial measures to secure the safety of suspended works and the users. Upon checking the safety measures undertaken by the Concessionaire, the Concessions Authority shall either revoke such suspension or instruct the Concessionaire to carry out such remedial measures as may be necessary in the reasonable opinion of the Concessions Authority.

If suspension of Construction is for reasons not attributable to the Concessionaire, the Independent Agency appointed by Concessions Authority shall determine any extension of the dates set forth in the Project completion schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority

accordingly whereupon the Concessing Authority shall extend such Project completion schedule dates in accordance with the recommendations of the Independent Agency. In the event that the Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Completion Date.

Article 12- Start of Commercial Services

12.1 Completion of work to provide commercial services

The [•] (date) or [•] months from the Effective Date, shall be the Completion Date and the Concessionaire agrees and undertakes that all work shall be completed on or before the Completion Date.

In the event that the Concessionaire fails to complete the work as per the terms of the Concession Agreement, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Concessioneing Authority, it shall pay Damages to the Concessioneing Authority in a sum calculated at the rate of 1% (one per cent) of the amount of Performance Security for delay of each day until such completion is achieved; provided that if the Completion Date is extended in accordance with the provisions of this Agreement, the date set forth shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if it has been amended as above.

Further, Construction is not completed within 210 (Two Hundred and Ten days) days from the Completion Date, unless the delay is on account of reasons solely attributable to the Concessioneing Authority or due to Force Majeure, the Concessioneing Authority shall be entitled to terminate this Agreement.

12.2 Commercial Operation Date (COD)

The Concessionaire shall inform the Concessioneing Authority that it intends to start the Commercial Operations as per this Concession Agreement, atleast 30 days before the date on which the Commercial Operations can be started. The Concessioneing Authority shall check the facilities provided and on completion of Construction shall issue the Completion Certificate after confirming that exhibits, features and facilities are present and functional. Once the Completion Certificate is issued the Concessionaire shall start the Commercial Operations as per the provisions of the Concession Agreement.

Article 13- Operation and Maintenance

13.1 Obligations of the Concessionaire

- 13.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Scheduled Land and the Aquarium, and if required, modify, repair or otherwise make improvements to the Aquarium to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:
- (a) permitting safe, smooth and flow of visitors in the Aquarium during the operational hours;
 - (b) collecting appropriate User Charges;
 - (c) preventing, with the assistance of the concerned law enforcement agencies, any encroachments in the Aquarium premises; including the Scheduled Land; and
 - (d) complying with safety requirements.
- 13.1.2 The Concessionaire shall remove promptly from the Scheduled Land all surplus Construction machinery and materials, waste materials, rubbish and other debris and keep the Scheduled Land in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- 13.1.3 Not later than 15 (fifteen) days prior to the beginning of each Accounting Year during the Operation Period, the Concessionaire shall provide to the Concessions Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”), Maintenance Manual and Safety Requirements as specified in Schedule E, F and G. Such Maintenance Programme shall include criteria to be adopted for deciding maintenance needs, intervals and procedures for carrying out inspection of all elements, arrangements and procedures for carrying out safety related measures, and intervals for major maintenance works and the scope thereof.
- 13.1.4 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Concessions Authority a monthly report stating in reasonable detail the condition of the aquarium including its compliance or otherwise with the maintenance requirements, Maintenance Manual, Maintenance Programme and Safety Requirements as specified in Schedule E, F and G and shall promptly give such other relevant information as may be required by the Concessions Authority.

- 13.1.5 The Concessionaire shall submit to the Concessioneing Authority the measures undertaken for any rescue operations in the event of breakdown or accident. The Concessioneing authority shall have right to ask for additional specific measures for safety of the visitors and the Aquarium.
- 13.1.6 The Concessionaire shall keep open the Aquarium for the Concessioneing Authority or the Independent Agency to inspect the measures undertaken for any rescue operations in the event of breakdown or accident. The Concessioneing authority shall have right to ask for additional specific measures for safety of the visitors and the Aquarium.

13.2 Closure of Commercial Operations

- 13.2.1 The Concessionaire shall not close any part of the Aquarium in the normal visiting hours for people, for operations and maintenance of the Aquarium, except with the prior written approval of the Concessioneing Authority, Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of operations and shall be accompanied by particulars thereof with all necessary grounds for the closure and the period of the closure. Within 3 (three) days of receiving such request, the Concessioneing Authority may grant permission with such modifications as it may deem necessary.
- 13.2.2 The provisions of Clause 13.2.1 shall not apply to closure of any part of the Aquarium, for maintenance, not exceeding 2 (two) hours in a period of twenty four hours. The Concessionaire shall keep the record of such closure of Aquarium and Concessioneing Authority shall have right to ask for any explanation for any closure of the facility.
- 13.2.3 Upon receiving the permission pursuant to Clause 13.2.1, the Concessionaire shall be entitled to close the Aquarium for the period specified therein. The Concessionaire shall not collect any User Charges in such period of closure of Aquarium activities. The Concessionaire shall keep closed all the Non-aquarium Activities in the Aquarium premises and on the Scheduled Land, till the time Aquarium is reopened for the visitors.
- 13.2.4 In case the Concessioneing Authority is of the opinion that the Concessionaire is not maintaining the facility as per the Good Industry Practices, the Concessioneing Authority shall have right to ask Concessionaire for upgrading the specific maintenance requirement within 30 days from the date of notice. The Concessioneing Authority under this clause shall demand only the specific maintenance requirements. In case the Concessionaire does not meet the specific maintenance requirements, then the Concessioneing Authority shall have right to suspend the operations of the Aquarium till the specific maintenance requirements are met.
- 13.2.5 In the event that the Concessionaire, upon notice fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing Authority may exercise overriding powers under Clause 13.2.4 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers

by the Concessions Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Concessions Authority in discharge of its obligations hereunder shall be deemed to be O&M expenses, and the Authority shall be entitled to recover them from the Concessionaire along with the Damages specified therein.

13.2.6 In case the Concessionaire keeps Aquarium closed for a continuous period of more than 15 days, then the Concessions Authority may have right to terminate the Concession Agreement.

13.2.7 In case the Concessionaire keeps Aquarium closed for more than 25 days, excluding the days of normal declared holidays of Aquarium, in a period of one accounting year, then the Concessions Authority may have right to terminate the Concession Agreement.

13.3 Closure of operations due to Emergency

13.3.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants closure to operations of the Aquarium, the Concessionaire shall be entitled to close the operations for so long as such Emergency and the consequences thereof warrant; provided that such closure and particulars thereof shall be notified by the Concessionaire to the Concessions Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Concessions Authority may give for dealing with such Emergency.

13.3.2 The Concessionaire shall re-open the Aquarium as quickly as practicable after the circumstances leading to its closure have ceased to exist. The Concessionaire shall not be eligible to operate any Non-aquarium Activities facility in the Aquarium premises and on the Scheduled Land, till the time Aquarium is reopened for the visitors.

13.4 Safety, breakdowns and accidents

13.4.1 The Concessionaire shall ensure safe conditions for the visitors, and in the event of unsafe conditions, breakdowns and accidents, it shall follow such procedures which conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

13.4.2 It would be the responsibility of the Concessionaire to conduct necessary rescue operations in the Aquarium in case of any accident or breakdown.

13.5 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under Article 13 of this Concession Agreement if site of repairs is not available for repairs, for the duration thereof, on account of any of the following:

- (a) an event of Force Majeure; or
- (b) measures taken to ensure the safety of people; or
- (c) compliance with a request from the Concessioneing Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the aquarium.

13.6 Barriers

The Concessioneing Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Scheduled Land except for reasons of Emergency, national security, law and order. The Concessioneing Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, closing down of approach roads to the Scheduled Land that may cause a Material Adverse Effect on the flow of visitors to the Aquarium.

13.7 Advertising on the Scheduled Land

The Concessionaire may undertake or permit any form of commercial advertising, display or hoarding within the building at appropriate places and such display shall be made aesthetically. The advertisement outside the building shall be only for promoting the Aquarium and no third party advertisement shall be allowed. It is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be paid by Concessioneing Authority to the Concessionaire in case of such change in law.

13.8 Regulation of Visitor's Flow

The Concessionaire shall take all possible measures to regulate and monitor the visitor's flow on the Scheduled Land so as to avoid any stampede or untoward incidences. The Concessionaire shall submit to the Concessioneing Authority details of the measures undertaken to avoid any stampede. The Concessioneing Authority shall have right to ask the Concessionaire to take additional measures to avoid any stampede possibility.

The Concessionaire shall be responsible for security and order on the premises. In case the Concessionaire demands any Police assistance for security reasons, the Concessioneing Authority shall request the appropriate authorities for their favorable consideration of such demand of assistance against payment

Article 14 – Monitoring of Work

14.1 Right of Concessioneing Authority to appoint Independent Agency

The Concessioneing Authority shall have right to appoint an Independent Agency for undertaking physical inspections, review data, collate information and give periodic reports regarding:

- a. Building Construction,
- b. Commercial Operation,
- c. Management and maintenance of the aquarium
- d. Commercial Operations
- e. Adherence to safety systems

14.2 Concessionaire shall provide all the support to such Independent Agency or person at their own cost for such inspection and shall furnish the data that such Independent Agency / person may ask to furnish. The Concessioneing Authority and any Independent Agency / person appointed by the Concessioneing Authority shall have the right to inspect, survey, verify any records of the Concessionaire.

14.3 The Concessioneing Authority shall also have the right to appoint a firm/ person for the purposes of determining the species and the maintenance of aquatic species in the aquarium ('Marine Expert'). The Marine Expert shall determine the species and the same shall be annexed as a schedule to this Concession Agreement.

Article 15 - FINANCIAL CLOSE

15.1 Financial Close

15.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve the execution of all financing agreements (“Financial Close”) within 180 (one hundred and eighty) days from the date of receipt of Letter of Intent and in the event of delay, it shall be entitled to a further period subject to not extending the period of 180 (one hundred and eighty) days. However, such period shall get extended, if such delay in Financial Close has occurred solely as a result of any default or delay by the Concessions Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure or reasons for delay given by Concessionaire are found authentic by the Concessions Authority.

15.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessions Authority forthwith, and shall have provided to the Concessions Authority, at least 2 (two) days prior to the appointed date, 3 (three) true copies of the financial package and the financial model, duly attested by a director of the Concessionaire, along with 3 (three) soft copies of the financial model in MS Excel version or any substitute thereof, which is acceptable to the senior lenders. The Concessionaire shall provide full detail of the equity funding and sources for the same along with the debt funding details.

15.2 Termination due to failure to achieve Financial Close

15.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 15.1.1, the Concessions Authority on the recommendations of the Maharashtra Urban Infrastructure Development Company Ltd. shall terminate the Agreement. However, if it is found by the Maharashtra Urban Infrastructure Development Company Ltd. that the Financial Close can be achieved by the Concessionaire within a reasonable period of time then Maharashtra Urban Infrastructure Development Company Ltd. shall recommend the extension of the period for achieving the Financial Close.

15.2.2 Upon Termination under Clause 15.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Concessions Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Performance Security.

Article 16 - User Charges

16.1 Collection of User Charges and timing for the Aquarium

- 16.1.1 On and from the Commercial Operation Date till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate charges from the users (“User Charges”) in accordance with this Agreement.
- 16.1.2 For ease of payment and collection, the User Charges for Modern Aquarium shall be rounded off to the nearest 5 (five) rupees; provided that the Concessionaire shall be free to collect appropriate User Charges for Modern Aquarium; provided further that the Concessionaire may determine and collect User Charges at such lower rates as it may, by public notice to the users, specify in respect of all or any category of users. The Concessionaire shall have right to collect special charges for any part of the Aquarium.
- 16.1.3 For ease of payment and collection, the User Charges for Second Generation Aquarium shall be rounded off to the nearest 1 (one) rupee; provided that the Concessionaire shall collect User Charges comparable to present Taraporevala Aquarium from the users with age more than 15 years; provided further that the Concessionaire may determine and collect User Charges at such lower rates as it may, by public notice to the users, specify in respect of all or any category of users.
- 16.1.4 The charges for the Second Generation Aquarium shall be comparable to the existing Aquarium and shall be determined by the Concessioneing Authority in consultation with the Concessionaire.
- 16.1.5 The Concessionaire acknowledges and agrees that upon payment of User Charges as prescribed, any user shall be entitled to see that part of the Aquarium for which he is entitled and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 16.1.6 The Concessionaire acknowledges and agrees that on any gate the movement of the users is smooth and no event occurs to endanger the safety of the users.
- 16.1.7 The Concessionaire shall keep open the Second Generation Aquarium and Modern Aquarium for at least 12 hours on all working days for all the users from 10:00 am to 10:00 pm. However the Concessionaire may keep open the Aquarium for additional hours subject to the applicable laws prevalent for such facilities on the Scheduled Land
- 16.1.8 The Concessionaire shall, upon request from any school, issue tickets to school children at most concessional rates in consultation with the Concessioneing Authority for visiting the Modern Aquarium. Additional two hours in the morning shall be provided to school children on all working days excluding Saturdays and Sundays.

16.1.9 The Concessionaire shall allow access to the Aquarium to research students, scholar and academicians at concessional rates that shall be determined by the Concessions Authority in consultation with the Concessionaire.

16.1.10 The Concessionaire shall collect User Charges from foreign citizen users at appropriate Foreign Exchange rates. However, payment in foreign currency shall be allowed from foreign citizen.

16.2 Display of User Charges

16.2.1 The Concessionaire shall, at the entry of the Aquarium, prominently display the applicable User Charges for information of Visitors in Marathi, Hindi and English.

16.2.2 The Concessionaire shall, from time to time, inform the Concessions Authority of the applicable User Charges. Such information shall be communicated at least 15 (fifteen) days prior to the revision of User Charges.

16.2.3 The Concessionaire shall display direction boards at various places on Scheduled Land for entrance to the Aquarium, Non-Aquarium areas and ticket counters. Such instructions shall be visible and shall be in Marathi, Hindi and English.

16.3 User Charges for the Non-aquarium Activities

16.3.1 The Concessionaire may at his own discretion sublet the part of the Aquarium for aquarium theme based commercial usage as per the terms of the agreement and Scope of Work mentioned under 2.1.3. The Concessionaire may collect appropriate User Charges for sub-letting of space within the Non-aquarium Activities Area strictly in terms of this Agreement. It is the responsibility of the Concessionaire to see that no activity which is not based on the approved theme is allowed in the Aquarium premises.

16.4 Review of Operations

16.4.1 The Concessions Authority and the Concessionaire shall have right to jointly review any major changes that are required, at the end of every 5 years starting from 10th year after the Effective Date. The Concessionaire and the Concessions Authority shall have right to jointly agree for such changes. In case such changes are resulting into the change in the terms and condition of this Agreement and have financial impact then the Concessions Authority, through an independent consultant shall review the terms and conditions which needs to be changed including the Concession Period. The fees of the independent consultant shall be borne by the Concessionaire.

Article 17- INSURANCE

17.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction period and the Operation Period, such insurances for such maximum sums as may be required under the financing agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “Insurance Cover”). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessions Authority as a consequence of any act or omission of the Concessionaire during the Construction period.

17.2 Notice to the Authority

Not later than 15 (fifteen) days prior to commencement of the Construction period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Concessions Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 17. Within 7 (seven) days of receipt of such notice, the Concessions Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution procedure shall apply.

17.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 17 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Concessions Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Concessions Authority.

17.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Concessions Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination payment, treat an amount equal to the insurance cover as deemed to have been received by the Concessionaire.

17.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 17 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Concessions Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to 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 or in any way connected with any loss, liability or obligation covered by such policies of insurance.

17.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessions Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire 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.

17.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Aquarium, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the financing agreements.

Article 18– Accounts and Audit

The Concessionaire shall maintain books of accounts recording its income and expenditure, receipts and payments, and assets and liabilities, in accordance with Applicable Law. It shall provide to the Concessing Authority two (2) copies of its balance sheet and profit and loss account along with a report thereon by its statutory auditors, as soon as reasonably available.

In addition, the Director of Fisheries will have rights to appoint reputed auditing companies to have the books, premises and operations examined at half yearly intervals at the cost of the Concessionaire. The timing and procedure of the audit will be left solely to the discretion of the respective auditors.

Article 19- FORCE MAJEURE

19.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event in Clause 19.2, 19.3 and 19.4 if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

19.2 Non Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic or plague, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent not related to any operations of the Concessionaire);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting the operations of the Concession Agreement;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire or the Concessioneing Authority in any proceedings for reasons other than (i) failure of the Concessionaire or the Concessioneing Authority to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Concessioneing Authority;
- (d) any failure of another service provider to the extent caused by any Non Political Event affecting the performance of the Concession Agreement;

19.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage interrupting the operations of the Concessionaire;
- (b) industry-wide or State-wide strikes or industrial action interrupting the operations of the Concession Agreement;
- (c) any failure of another service provider to the extent caused by any Indirect Political Event affecting the performance of the Concession Agreement;

19.4 Political Event

A Political Event shall mean one or more of the following acts or events:

- (a) Change of law which does not allow the normal operations of the Concession Agreement;
- (b) expropriation or compulsory acquisition of any Assets or rights of the Concessionaire;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure of another service provider to the extent caused by another Political event affecting the performance of the Concession Agreement
- (e) any event or circumstances of a nature analogous to any of the foregoing;

19.5 Duty to report Force Majeure Event

Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief under the Concession Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 24 (twenty four) hours after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

19.6 Effect of Force Majeure Event on the Concession

19.6.1 Upon the occurrence of any Force Majeure Event prior to the Commercial Operation Date:

- (a) the period set forth for start of Commercial Operation Date shall be extended by a period equal in length to the duration of the Force Majeure Event provided the duration of Force Majeure Event is not exceeding a period more than 90 (Ninety) days.
- (b) In case the period of Force Majeure Event is likely to exceed continuous period of 90 (ninety) days or has exceeded continuous period of 90 (ninety) days, either party may in it's discretion terminate the Concession Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

19.6.2 At any time after the Commercial Operation Date, if any Force Majeure Event occurs:

- (a) whereupon the Affected Party is unable to perform it's obligation under this Concession Agreement despite making best efforts, the Concessionaire shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided period of such Force Majeure Event does not last for continuous period of more than 7 (Seven) days and provided:
 - i. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
 - ii. the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - iii. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.
- (b) In case the period of Force Majeure Event exceeds for continuous period of 30 (thirty) days and the either party is of opinion that by recalling the fresh bids for appointment of aquarium operator, the inconvenience caused can be reduced, then such party can terminate the Concession Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a

representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

19.7 Allocation of costs arising out of Force Majeure

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

19.8 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 27; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

Article 20- DEFAULT

20.1 Concessionaire Default

A Concessionaire event of default (“Concessionaire Default”) shall deem to have arisen on the occurrence of the following events, viz. –

- 20.1.1 Upon non-payment of the Concession Fee by the Concessionaire, within a period of 4 weeks from the receipt of a Notice of delay issued by Concessioneing Authority intimating such delay;
- 20.1.2 Upon the Concessionaire deviating from the Scope of Work under Article 2;
- 20.1.3 Upon the Concessionaire failing to adhere to the Service Level Parameters as specified in Schedule D
- 20.1.4 Upon the Performance Security being encashed and appropriated by the Concessioneing Authority as per the Concession Agreement and the Concessionaire failing to replenish or provide fresh Performance Security within a cure period of 15 (fifteen) days;
- 20.1.5 Failure to furnish fresh Performance Security in the form of Bank Guarantees upon termination of the previous Bank Guarantee
- 20.1.6 Upon failure by the Concessionaire to achieve the project milestone as per the Detailed Business Plan and continues to be in default for 90 (ninety) days;
- 20.1.7 The Concessionaire does not achieve the COD as per the date mentioned in the Agreement and continues to be in default for 210 (two hundred and ten) days;
- 20.1.8 The Concessionaire abandons or manifests intention to abandon the operations of the Aquarium without prior written consent of the Concessioneing Authority;
- 20.1.9 On the Scheduled Land the Concessionaire allows any Non-aquarium Activities which are not Aquarium theme based;
- 20.1.10 The area under the theme based Non-aquarium Activities is more than that is allowed as per the terms of this Agreement;
- 20.1.11 The Concessionaire has failed to make any payment to the Concessioneing Authority within the period specified in this Agreement;
- 20.1.12 The Concessionaire has failed to make any payment to any agency, within the time period specified, which is providing any services to the Aquarium and such a payment is not under dispute and the liability of such services has not been expressly mentioned to be taken by the Concessioneing Authority by this Concession Agreement;
- 20.1.13 The Concessionaire creates any Encumbrance on Scheduled Land in breach of this Agreement;
- 20.1.14 The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- 20.1.15 Change in management control of the Concessionaire Company which according to the Concessioneing Authority may have Material Adverse Effect towards the operations of the Aquarium.
- 20.1.16 The Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets or; the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the opinion of the Concessioneing Authority, a Material Adverse Effect;
- 20.1.17 A resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court;
- 20.1.17 The Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement.

20.2 Compensation for Concessionaire Default

In the event of the Concessionaire Default, it shall pay to the Concessions Authority by way of compensation all Damages caused to the Aquarium as a consequence of such default and also pay to the Concessions Authority any additional revenue generated through such breach of Agreement. The compensation to be paid by the Concessionaire is apart from any amount that is payable by the Concessionaire according to the provisions of law. The compensation under this clause shall be paid by the Concessionaire within 7 (seven) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

20.3 Payment of Compensation – not a remedy for termination

The Concessions Authority will have right to terminate or suspend the Concession Agreement in consultation with the State Finance/Planning Department in case of Concessionaire Default or breach of this Agreement. The Termination or suspension order of the Concessions Authority cannot be challenged by the Concessionaire on the grounds of payment of compensation under the Concession Agreement.

Article 21- SUSPENSION OF CONCESSIONAIRE’S RIGHTS

21.1 Suspension upon Concessionaire Default

21.1.1 Upon occurrence of a Concessionaire Default, the Concessions Authority shall be entitled in consultation with the Head of State Finance/Planning Department and State PPP Nodal officer, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement, and (ii) authorize any other aquarium operator to exercise the same during such suspension (the “Suspension”). Suspension hereunder shall be effective forthwith upon issue of notice by the Concessions Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

21.1.2 A separate Escrow Account shall be created which shall be operated by the Concessions Authority and any User Charges or revenues collected by or on behalf of the Concessions Authority during such suspension shall be deposited in the Escrow Account. During the period of Suspension hereunder, all things done or actions taken, including expenditure incurred by the appointed aquarium operator by the Concessions Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement, shall be paid out of the Escrow Account and any expenditure in excess of amount in the Escrow Account shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Concessions Authority and the appointed aquarium operator for all costs incurred during such period.

21.2 Revocation of Suspension

Upon the Concessionaire having cured the Concessionaire Default within the Suspension period not exceeding 270 (two hundred seventy) days from the date of Suspension, the Concessions Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

21.3 Termination during Suspension Period

21.3.1 At any time during the period of Suspension under Article 21, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Concessions Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement.

21.3.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 21.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination notice had been issued by the Concessions Authority upon occurrence of a Concessionaire Default.

Article 22- Termination

22.1 Termination for Concessionaire Default

- 22.1.1 Save as otherwise provided in this Agreement, in the event of any Concessionaire Default, and the Concessionaire fails to cure the default within the cure period set forth after issuance of notice from the Concessions Authority, or where no cure period is specified, then within a cure period of 60(Sixty) days, the Concessionaire shall be deemed to be in default of this Agreement, unless the default has occurred solely as a result of any breach of this Agreement by the Concessions Authority or due to Force Majeure event.
- 22.1.2 However in case Concessions Authority is of opinion that if any cure period is given to the Concessionaire which may result into deterioration of the Aquarium or breach of any law, then Concessions Authority shall have right not to give any cure period to the Concessionaire.

22.2 Termination due to Material Breach

- 22.2.1 The Concessions Authority shall have the right to terminate this Agreement with immediate effect if the Concessionaire causes a breach of any or all conditions provided hereinunder:
- (a) Failure of the Concessionaire to comply with its obligations and undertakings in this Agreement, which failure is not corrected within the prescribed cure period;
 - (b) Failure to fulfill Conditions Precedent under Clause 4.3;
- 22.2.2 In case of Material Breach of the Agreement, the Concessions Authority shall have the right to immediately terminate the Agreement and also direct the forfeiture of the Performance Security.

22.3 Procedure to issue Termination Notice

Without prejudice to any other rights or remedies which the Concessions Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Concessions Authority in consultation with the State Finance/Planning Department and State (Public Private Partnership) PPP Nodal officer shall be entitled to terminate this Agreement by issuing a Termination notice to the Concessionaire; provided that before issuing the Termination notice, the Concessions Authority shall by a notice inform the Concessionaire of its intention to issue such Termination notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

22.4 Effect of Termination

22.4.1 Effect of Termination due to default of the Concessionaire:

22.4.1.1 After the Commercial Operation Date:

- a. Upon Termination due to default of the Concessionaire, an independent valuer shall assess the depreciated asset value and the business value of the project. The Concessions Authority shall auction the Concessionaire rights in respect of

this Project to carry out operation, maintenance and management of the Project as per the Detailed Business Plan for the remainder of the Concession period. In the auction, the base premium of the existing assets shall be fixed as the business value of the Project determined by the independent valuer.

- b. The termination amount shall be minimum of the depreciated asset value, business value and the amount realized from the auction of the Concession rights. Such amount, after deducting all Taxes due and payable by the Concessionaire, shall be deposited in an Escrow Account for appropriation. Out of the amount deposited in the Escrow Account the payment shall be prioritized as follows:
 - i. The Outstanding Secured Debt position of the Concessionaire as per the latest loan account statement from the senior lenders to the extent it has been utilized towards this Project
 - ii. Outstanding liabilities payable excluding the liabilities towards the group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilized towards this Project
 - iii. Any outstanding unsecured loans/subordinate debt to the extent it has been utilized towards this Project
 - iv. Outstanding liabilities towards group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilized towards this Project.
- c. All the above payment shall be made to the extent of amount deposited in the Escrow Account. In case of any shortfall no amount shall be payable by the Concessioneing Authority. Any amount in the Escrow Account in excess of the above outstanding amount shall be given to the Concessionaire.
- d. Any amount received from the auction of the Concession rights in excess of the amount to be deposited in the Escrow Account shall be given to the Concessioneing Authority.
- e. All rights and interests in the Construction made in the Aquarium and infrastructure created for operating the Aquarium including any infrastructure provided on the Non-aquarium Activities area shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, security interest, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority. For the avoidance of doubt, in case the outstanding secured debt amount is more than the amount deposited in the Escrow Account the secured lenders shall not have any security interest on the constructed property or any infrastructure provided on the Scheduled Land.

22.4.1.2 Before the Commercial Operation Date

- a. Upon Termination due to default of the Concessionaire, an independent valuer shall assess the asset value and possible usage of the half constructed property for determining the business value of the Project. The Concessioneing Authority shall decide the terms of the fresh tender based on the percentage of completion of the Construction and assessment of the independent valuer. The Nominated Concessionaire shall be appointed and the first preference shall be given to complete the Construction as per the Detailed Business Plan and on the existing assets, to protect the interests of the secured lenders to extent possible. In case the Concessioneing Authority does not want to continue with the Construction

already made by the Concessionaire then only the scrap value shall be paid to the secured lenders and secured lenders shall have right to conduct the auction for the scrap within the time period given by the Concessions Authority and the secured lenders shall not have any security interest on the constructed property or any infrastructure provided on the Scheduled Land.

- b. In case the Concessions Authority decides to continue with the existing Construction then the Concessions Authority shall auction the Concessionaire rights in respect of this Project to carry out balance Construction, operation, maintenance and management of the project as per the Detailed Business Plan for the remainder of the Concession period. In the auction, the base premium of the existing assets shall be fixed as the business value of the Project determined by the independent valuer.
- c. The termination amount shall be minimum of the asset value, business value and the amount realized from the auction of the Concession rights. Such amount, after deducting all Taxes due and payable by the Concessionaire, shall be deposited in an Escrow Account for appropriation. Out of the amount deposited in the Escrow Account the payment shall be prioritized as follows:
 - i. The Outstanding Secured Debt position of the Concessionaire as per the latest Loan Account Statement from the Senior Lenders to the extent it has been utilized towards this project
 - ii. Outstanding liabilities payable excluding the liabilities towards the group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilized towards this project
 - iii. Any outstanding unsecured loans/subordinate debt to the extent it has been utilized towards this project
 - iv. Outstanding liabilities towards group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilized towards this project.
- d. All the above payment shall be made to the extent of amount deposited in the Escrow Account. In case of any shortfall no amount shall be payable by the Concessions Authority. Any amount in the Escrow Account in excess of the above outstanding amount shall be given to the Concessionaire.
- e. Any amount received from the auction of the Concession rights in excess of the amount to be deposited in the Escrow Account shall be given to the Concessions Authority.
- f. All rights and interests in the Construction made in the Aquarium and infrastructure created for operating the Aquarium including any infrastructure provided on the Non-aquarium activities area shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all liens, security interest, claims and Encumbrances, without any further act or deed on its part or that of the Concessions Authority. For the avoidance of doubt, in case the outstanding secured debt amount is more than the amount deposited in the Escrow Account the secured lenders shall not have any security interest on the constructed property or any infrastructure provided on the Scheduled Land.

22.4.2 Effect of Termination due to Force Majeure event:

22.4.2.1 Due to Political Event:

- a. In case of Termination due to Force Majeure Political event, the Concessioneing Authority shall assess the method in which maximum value can be derived from the assets (other than land) on the Scheduled Land in consultation with the Concessionaire. The Concessioneing Authority shall adopt and implement the most suitable method of realization of residual value. Such amount after deducting all Taxes due and payable by the Concessionaire shall be deposited in the Escrow account for appropriation. Out of the amount deposited in the Escrow Account the payment shall be prioritized as follows:
 - i. The Outstanding Secured Debt position of the Concessionaire as per the latest loan account statement from the senior lenders to the extent it has been utilised towards this project
 - ii. Outstanding liabilities payable excluding the liabilities towards the group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilised towards this project
 - iii. Any outstanding unsecured loans/subordinate debt to the extent it has been utilised towards this project
 - iv. Outstanding liabilities towards group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilised towards this project.
- b. Any residual value in the Escrow Account in excess of the above outstanding amount shall be given to the Concessionaire.
- c. All rights and interests in the Construction made in the Aquarium and infrastructure created for operating the Aquarium including any infrastructure provided on the Non-aquarium activities area shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, security interest, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority. For the avoidance of doubt, the secured lenders shall not have any security interest on the constructed property or any infrastructure provided on the Scheduled Land.

22.4.2.2 Due to Non Political/Indirect Political Event:

- a. In case of termination due to Force Majeure Non Political event / Indirect Political Event, the Concessioneing Authority shall assess the method in which maximum value can be derived from the assets (other than land) on the Scheduled Land in consultation with the Concessionaire. The Concessioneing Authority shall adopt and implement the most suitable method of realization of residual value. Such amount after deducting all Taxes due and payable by the Concessionaire shall be deposited in the Escrow account for appropriation. Out of the amount deposited in the Escrow account the payment shall be prioritized as follows

- i. The Outstanding Secured Debt position of the Concessionaire as per the latest loan account statement from the senior lenders to the extent it has been utilised towards this project.
 - ii. Outstanding liabilities payable excluding the liabilities towards the group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilised towards this project.
 - iii. Any outstanding unsecured loans/subordinate debt to the extent it has been utilised towards this project.
 - iv. Outstanding liabilities towards group entities, associates and subsidiaries of the Concessionaire to the extent it has been utilised towards this project.
- b. All the above payment shall be made to the extent of amount deposited in the Escrow account. Any residual value in the escrow account in excess of the above outstanding amount shall be given to the Concessionaire.
- c. All rights and interests in the Construction made in the Aquarium and infrastructure created for operating the Aquarium including any infrastructure provided on the Non-aquarium Activities area shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, security interest, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority. For the avoidance of doubt, the secured lenders shall not have any security interest on the constructed property or any infrastructure provided on the Scheduled Land.
- d. The Outstanding Secured Debt position of the Concessionaire towards this project shall be determined by the latest loan account statement from the senior lenders which shall be verified by an independent auditor appointed by the Concessioneing Authority. The independent auditor shall verify the Outstanding Debt of the Concessionaire towards this project as on the day of termination , shall verify the disbursement of debt amount for the project, utilization of the debt amount towards the Project along with verification and confirmation of required accounting as well as legislative norms for the same and any earlier years records available. The independent auditor shall also verify the outstanding liabilities payable by the Concessionaire, the outstanding unsecured loans, subordinate debts and the outstanding liabilities towards group entities, associates and subsidiaries of the Concessionaire. The charges of the independent auditors shall be reimbursed by the Concessionaire to the Concessioneing Authority.

22.4.3

Concessionaire acknowledges that within 30 days of Termination, the Concessionaire must vacate the Scheduled Land. Due to this Concession Agreement, Concessionaire shall not have any usufructory rights and also shall not have any other rights in whatsoever manner on the Scheduled Land. The Concessionaire shall transfer the Scheduled Land and the Aquarium to the Concessioneing Authority upon Termination of this Agreement in the condition which is not materially inferior as compared to its condition at the date of start of Commercial Operations, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof.

- 22.4.4** Concessionaire acknowledges that the rights under the Concession Agreement are of temporary nature and does not allow to remove or shift any Construction built by the Concessionaire or shift any non-human living thing on the Scheduled Land. Concessionaire shall not have any right on any Construction, equipment, furniture and fixtures including any non-human living creature on the Scheduled Land.
- 22.4.5** The Concessionaire shall refund all the deposits, advances and credit taken by the Concessionaire from all the users and shall provide such details to the Concessions Authority. Concessionaire shall cure all defects and deficiencies so that, its usability for any future user is not less than it was on the Commercial Operation Date.
- 22.4.6** Concessionaire shall deliver relevant records and reports pertaining to the design, engineering, operation and maintenance, including all programmes and manuals pertaining thereto as on the Transfer Date.
- 22.4.7** During the Termination and in process of selection of a Nominated Concessionaire, the Concessionaire shall continue to operate the Aquarium under the supervision and management of the Concessions Authority. Even after Termination the Concessionaire shall operate the Aquarium till any other developer / operator is appointed. The Concessionaire shall collect the User Charges and also maintain the Aquarium during such period, at its cost, such that condition of the Aquarium is at no time inferior as compared to its condition on the date of Termination. In case it is found that the Aquarium is not maintained properly by the Concessionaire during such period then cost of restoring such damages incurred shall be deducted from the termination amount to be deposited in the Escrow Account.
- 22.4.8** The Concessionaire shall transfer the Scheduled Land and the Aquarium to the Concessions Authority upon Termination of this Agreement in the condition which is not materially inferior as compared to its condition at the date of start of Commercial Operations, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof.
- 22.4.9** The Concessionaire shall be responsible for its staff and pay the salaries of the entire staff except for such identified key personnel who would continue till such time a new concessionaire takes over.
- 22.4.10** The Concessionaire shall after Termination be restricted from exploiting the intellectual property rights of Taraporewala Aquarium without specific permission of the Concessions Authority.

22.5 Other rights and obligations of the Concessions Authority

Upon Termination for any reason whatsoever, the Concessions Authority shall:

- (a) take possession and control of the Scheduled Land including any Construction, furnitures and fixtures, equipment and all non-human living creatures on the Scheduled Land;
- (b) have the right to prohibit the Concessionaire from entering dealing with the assets on the Scheduled Land and the intellectual property created for the Project;
- (c) monitor repayment to be done by the Concessionaire of deposits and credit taken by the Concessionaire
- (d) not be liable for:

- (i) any compensation for the loss of employment, continuance or regularisation of employment, absorption or re-employment in relation to any person in the employment of or engaged by the Concessionaire; and
- (ii) any sums claimed by 3rd parties for work and services performed and the same shall constitute debt between the Concessionaire and such 3rd parties. The Concessioneing Authority shall in no way or manner be liable or responsible for such sums.

22.6 Liability after Termination due to default of the Concessionaire

The Concessionaire shall be responsible for payments of all deposit taken, obligations towards employees, sub-lessee, contractors and for goods bought and services hired after reducing outstanding liabilities as mentioned in Clause 22.4 above. The liability of the Concessionaire is absolute and will continue even after the termination of the Concession Agreement.

Article 23– Transfer of Project

23.1 Scope of Transfer

- 23.1.1 The Concessionaire shall at the end of the Concession Period or upon Termination of the Concession Agreement hand over to the Concessions Authority, the Scheduled Land and assets created during the Concession Period, free and clear of any liability, charge and/or Encumbrances created or suffered by the Concessionaire after the Effective Date and before the end of Concession Period, all of the Concessionaire's right, title and interest in and to the Scheduled Land and assets constructed by the Concessionaire on the Scheduled Land. The Concessionaire shall also deliver to the Concessions Authority on such date such operating manuals, plans, design drawings and other information as may reasonably be required by the Concessions Authority to enable it to continue the operation of the Aquarium;
- 23.1.2 All service contracts of the Concessionaire shall specify the Transfer Date & its effect. Failure to specify the Transfer Date & its effect in the service contracts shall not adversely affect the Concessions Authority and the Concessionaire shall be solely responsible for handover of the Scheduled Land and assets on the Transfer Date at its own risk & cost.
- 23.1.3 The Concessionaire shall also do all the necessary transition support for the Nominated Concessionaire for a period of three months after the end of the original Concession Period in this Agreement.
- 23.1.4 The costs involved in training the Nominated Concessionaire, transfer of technology and information to the Nominated Concessionaire and the transition support shall be borne solely by the Concessionaire.
- 23.1.5 The Concessionaire shall hand over full and peaceful possession of the Scheduled Land to the Concessions Authority and the Concessionaire, its contractors, sub-contractors, agents, employees appointed by the Concessionaire shall vacate the Scheduled Land;

23.2 Transfer Costs

- (a) The Concessionaire shall transfer the Scheduled Land, along with all the assets, to the Concessions Authority free of cost and consideration & without any charge, Encumbrance, liability or obligation passing on and as per terms of this Concession Agreement;
- (b) The Concessionaire shall be responsible for the costs and expenses, including stamp duties, Taxes, legal fee and expenses incurred in connection with the transfer of the Project. The Concessionaire hereby undertakes to indemnify the Concessions Authority against any liability arising out of any non-payment of Tax liability till the Transfer Date that may be sought to be or is imposed on a later date on the Concessions Authority by the income tax authorities, in relation to the Scheduled Land and the assets.

23.3 Intellectual Property

The Concessionaire shall grant to the Nominated Concessionaire in accordance with Clause 3.5 of this Agreement an irrevocable, royalty-free, non-exclusive license to use the intellectual property, which have been or are hereinafter written, originated, made or owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Concession Agreement or the design, Construction, operation, maintenance, insurance and financing of the Project.

Article 24- ASSIGNMENT AND CHARGES

24.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Concessionaire to any person except with prior consent in writing of the Concessions Authority, which consent the Concessions Authority shall be entitled to decline without assigning any reason.

The Concessionaire shall not create nor permit to subsist any Encumbrance or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement to which the Concessionaire is a party except with prior consent in writing of the Concessions Authority, which consent the Concessions Authority shall be entitled to decline without assigning any reason.

24.2 Notwithstanding anything that is contained in this clause hereinabove, the assignment clause shall not apply to the following:

- (a) liens/encumbrances arising by operation of law in the ordinary course of business of the Concessionaire;
- (b) mortgages/pledges/hypothecation of goods/assets other than the Scheduled Land, as security for indebtedness, in favour of the Lenders;
- (c) assignment of Concessionaire's rights and benefits under this Agreement to the Lenders as security for financial assistance provided by them; and
- (d) any assignment of rights to the Concessionaire shall revert back to the Concessions Authority by efflux of time.

24.3 Assignment of Contracts

The Concessions Authority shall at its own discretion have the right to choose and retain on the Transfer Date all or any of the contracts, equipment contracts, supply contracts and all other contracts, entered into by the Concessionaire and subsisting as on the Transfer Date.

Article 25- LIABILITY AND INDEMNITY

25.1 General indemnity

The Concessionaire will indemnify, defend, save and hold harmless the Concessions Authority and its officers, servants, agents and consultants against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Concessions Authority indemnified persons.

25.2 Liability of Concessions Authority

The Concessions Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of

- (a) defect in title
- (b) breach by the Concessions Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

25.3 Indemnity by the Concessionaire

Without limiting the generality of Clause 25.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessions Authority and the Concessions Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

25.4 Defence of claims

25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled,

at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

25.4.3 If the Indemnifying Party exercises its rights under Clause 25.4, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 27.3.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

25.5 Maximum Indemnification Amount

During the term of this Agreement the aggregate liability of the Concessions Authority in respect of any and all claims under this Article 25 shall not exceed Rupees [●].

25.6 No consequential claims

Notwithstanding anything to the contrary contained in this Article 25, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

25.7 Survival on Termination

The provisions of this Article 25 shall survive Termination.

Article 26 - DISPUTE RESOLUTION

26.1 Dispute resolution

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the head of the Concessioneing Authority, head of State Finance/Planning Department and State PPP Nodal officer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation, either Party may require such Dispute to be referred to the Head of the Concessioneing Authority, Head of State Financing/Planning Department, State PPP Nodal officer and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 27.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by appointment of a mutually agreeable sole Arbitrator and in case of non agreement for appointment of sole arbitrator, reference shall be made to Board of Arbitrators appointed in accordance with Clause 26.3.2. Arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of arbitration shall be Mumbai, and the language of arbitration proceedings shall be English.

26.3.2 In case of non agreement of sole arbitrator, there shall be a Board of three arbitrators, of whom Concessioneing Authority, head of State Finance Department and State PPP Nodal Officer shall select one and Concessionaire shall select one , and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement

between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996 and any amendment thereto.

- 26.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 26.3.4 The Concessionaire and the Concessions Authority agree that an Award may be enforced against the Concessionaire and/or the Concessions Authority, as the case may be, and their respective assets wherever situated.
- 26.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

Article 27- Disclosure

27.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person appointed by the Concessioneing Authority or any Independent Agency appointed by the Concessioneing Authority, copies of this Concession Agreement, the Maintenance Programme, Safety Requirements and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days on the Scheduled Land.

Article 28- Redressal of Public Grievances

28.1 Complaints Register

28.1.1 The Concessionaire shall maintain a public relations office at Scheduled Land, where it shall keep a register (the “Complaint Register”) open to public access at all times for recording of complaints by any person (the “Complainant”). One Complaint Register shall also be maintained with the Representative of Concessioneing Authority on the office space provided on the Scheduled Land Information relating to the availability of and access to the Complaint Register with the Concessionaire and with the Representative of the Concessioneing Authority shall be prominently displayed by the Concessionaire at customer service office so as to bring it to the attention of all the customers.

28.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

28.2 Redressal of complaints

28.2.1 The Concessionaire shall take prompt and reasonable action for redressal of each complaint in consultation with the representative appointed by the Concessioneing Authority in the office space provided in the Aquarium according to the quality standards as mentioned in the Concession Agreement. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

28.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Concessioneing Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month and action taken.

Article 29- MISCELLANEOUS

29.1 Governing law and jurisdiction

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

29.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

29.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire shall be deemed to be acquired and owned by the Concessionaire and the property representing the capital investment made by the Concessions Authority shall be deemed to be acquired and owned by the Concessions Authority. For the avoidance of doubt, the Concessions Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

29.4 Delayed payments

The Concessionaire agrees that payments due from it to the Concessions Authority under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the Concessionaire shall pay a penalty for the period of delay calculated at a rate equal to 0.05% p.a. cumulated every 7 days, and recovery thereof shall be without prejudice to the rights of the Concessions Authority under this Agreement including Termination thereof.

29.5 Waiver

29.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this 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 authorised representative of the Party; and
- c. shall not affect the validity or enforceability of this Agreement in any manner.

29.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to 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.

29.6 Liability for inspection of Documents

Except to the extent expressly provided in this Agreement:

- a. no review, comment or inspection by the Concessioneing Authority or any agency appointed by the Concessioneing Authority of any document submitted by the Concessionaire nor any observation or inspection of any document or operations conducted at the Scheduled Land hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. the Concessioneing Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub clause (a) above.

29.7 Exclusion of implied warranties etc.

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

29.8 Survival

29.8.1 Termination shall:

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

29.8.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

29.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

29.10 Severability

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

29.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

29.12 Third Parties

This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement, unless expressly provided in this agreement.

29.13 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their permitted successors and permitted assigns, as per the provisions of this agreement.

29.14 Relationship between the Parties

The Concessionaire is not the agent of the Concessions Authority and is not authorised to bind the Concessions Authority or execute a contract on behalf of the Concessions Authority for any purpose during the pendency of this Agreement.

29.15 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile and by letter delivered by hand to the Scheduled Land and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Concessions Authority;
- (b) in the case of the Concessions Authority, be given by facsimile and by letter delivered by hand and be addressed to the Concessions Authority at the address mentioned hereinabove with a copy delivered to the Concessions Authority representative or such other person as the Concessions Authority may from time to time designate by notice to the Concessionaire; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

29.16 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

29.17 Counterparts

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

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of

GOVERNMENT OF MAHARASHTRA
by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

In the presence of:

- 1.
- 2.

Schedule A – Site Location (Scheduled Land)



Schedule B – Detailed Business Plan

Schedule C – Compliance Certificate

Schedule D – Service Level Parameters

Schedule E – Maintenance Programme

Schedule F – Maintenance Manual

Schedule G – Safety Requirements

Schedule H – Description of Scheduled Land

All that piece and parcel of Revenue Plot No. 1/474 admeasuring 4369.05 sq. mts and bounded on:

North by :

South by :

East by :

West by :

Schedule I – Aquarium Activities

Schedule J – Non Aquarium Activities