

ANNEXURE I OF THE TENDER DOCUMENT

DATED _____, 2019

LEAVE AND LICENCE AGREEMENT

BETWEEN

**NEW DELHI MUNICIPAL COUNCIL
(as The Licensor)**

AND

**[Insert name of the Licencee]
(as The Licencee)**

For the Property at Plot No. 1, Man Singh Road, New Delhi 110011

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	4
2.	LICENSED PREMISES	10
3.	LICENCE PERIOD; EFFECTIVE DATE	12
4.	LICENCE FEE AND MANNER OF PAYMENT	13
5.	OCCUPATION OF LICENSED PREMISES; OWNERSHIP; PERMITTED USE; USAGE; ASSIGNMENT AND SUB-LICENSING	19
6.	RIGHTS OF THE LICENSOR.....	20
7.	LICENSOR’S COVENANTS.....	21
8.	LICENCEE’S COVENANTS AND UNDERTAKINGS.....	22
9.	NO CHANGE IN CONTROL	29
10.	CONDITIONS PRECEDENT TO OCCUPATION OF LICENSED PREMISES	29
11.	REPRESENTATIONS AND WARRANTIES.....	30
12.	FRAUD AND CORRUPT PRACTICES.....	32
13.	INSURANCE	33
14.	EXPANSION AND INCREASE IN LICENCE FEE	34
15.	FORCE MAJEURE	35
16.	EVENTS OF DEFAULT	37
17.	TERMINATION	40
18.	HANDING OVER OCCUPATION; CONSEQUENCES OF EXPIRY OR TERMINATION OF THE LICENCE	41
19.	BARE LICENCE.....	42
20.	GOVERNING LAW	43
21.	NOTICES.....	43
22.	AUTHORITY OF PARTIES.....	44
23.	COUNTERPARTS	44
24.	STAMP DUTY AND REGISTRATION CHARGES	44
25.	LEGAL COSTS.....	44
26.	OVERRIDING EFFECT	44
27.	SEVERABILITY.....	44
28.	VARIATION.....	45
29.	WAIVER	45
30.	WAIVER OF IMMUNITY.....	45
31.	SURVIVAL	45
32.	FURTHER ASSURANCES.....	45
33.	NAMING OF THE LICENSED PREMISES	45
	SCHEDULE 1 - DETAILS OF LICENSED PREMISES	47
	SCHEDULE 2 - OCCUPATION LETTER.....	48
	SCHEDULE 3 - OCCUPATION TAKEOVER LETTER.....	50
	SCHEDULE 4 - FORMAT OF PERFORMANCE SECURITY	52
	SCHEDULE 5 - FORMAT OF REPORTING LICENCE FEE.....	55
	SCHEDULE 6 - FORMAT OF RECONCILIATION STATEMENT	56
	SCHEDULE 7 – EXECUTED COPY OF INTEGRITY PACT.....	57
	{SCHEDULE 8 – EXECUTED COPY OF THE MANAGEMENT AGREEMENT}.....	58

[To be duly stamped and registered]

LEAVE AND LICENCE AGREEMENT

This leave and licence agreement ("**Agreement**") is made at New Delhi on this _____ day of _____, 2019 ("**Execution Date**"),

BY AND BETWEEN:

- I. THE NEW DELHI MUNICIPAL COUNCIL**, a body corporate constituted under the provisions of the New Delhi Municipal Council Act, 1994, as amended from time to time, having its office at Palika Kendra Building, Opposite Jantar Mantar, Parliament Street, New Delhi-110001, India (hereinafter referred to as the "**NDMC**" or "**Licensor**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the **FIRST PART**;

AND

- II.** [insert name of Licencee] a company incorporated or existing under the provisions of the Companies Act, 2013 and having its registered office at [insert address of registered office of the Licencee] (hereinafter referred to as the "**Licencee**", which expression shall, unless the context otherwise requires, include its successors) of the **SECOND PART**.

The Licensor and the Licencee are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:

- (A) The Licensor is seized and possessed of or otherwise well and sufficiently entitled to all that immovable property being the plot of land admeasuring 3.78 acres situated at Plot No. 1, Man Singh Road, New Delhi - 110011, including the building constructed thereon, and all other facilities and appurtenances constructed or standing thereon, as more particularly described in **Schedule 1** hereto (the "**Licensed Premises**"). The Licensed Premises is a public premise as defined under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, as amended from time to time.
- (B) With the objective of selecting a licensee for the operation, management and maintenance of the Licensed Premises, on "**As Is Where Is Basis**", as a 5 star hotel and other uses permitted hereunder for the Licence Period, the Licensor had invited bids/ proposals from eligible bidders vide the Tender Document No. [insert tender document number] dated [insert date].
- (C) Of all Financial Bids (*as defined in the Tender Document*) submitted by Qualified Bidders (*as defined in the Tender Document*), the Financial Bid submitted by [Insert Name of Successful Bidder] was the highest and accordingly, it was selected as the "Successful Bidder" and a Letter of Award (*as defined hereinafter*) was issued by the Licensor in its favour.
- (D) The Licencee is the entity which will operate, manage and maintain the Licensed

Premises in accordance with the terms and conditions contained in this Agreement and the Tender Documents.

- (E) Now therefore, relying on the representations, warranties, covenants and undertakings made by the Licencee, the Licensor has called upon the Licencee to enter into this Agreement, which the Licencee has agreed to, for operating and managing the Licensed Premises on a leave and licence basis for the Licence Period (*as defined hereinafter*) on the terms and conditions set forth hereinafter.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall bear the meanings ascribed to them below. Capitalized terms used but not defined shall have the same meaning as ascribed to them under the Tender Document.
- 1.1.1 "**Acceptable Bank**" means any of the scheduled banks listed in Second Schedule of the Reserve Bank of India Act, 1934, and having a branch at New Delhi, excluding those listed under the headings of Gramin Banks, Urban Co-operative Banks and State Co-operative Banks.
- 1.1.2 "**Affected Party**" shall have the meaning ascribed to it in Clause 15.1.
- 1.1.3 "**Agreement**" shall mean this leave and licence agreement including the Schedules and annexures hereto, as modified, from time to time, in accordance with the terms herein.
- 1.1.4 "**Applicable Law**" shall mean all applicable statutes, laws, by-laws (including building by-laws), rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any Governmental Authority, statutory authority or other municipal and local authorities or court or other law, rule or regulation approval from the relevant Governmental Authority, government resolution, directive, or other government restriction or any similar form of decision of, or determination by, or any interpretation or adjudication having the force of law in India, whether in effect on the date of this Agreement or thereafter.
- 1.1.5 "**Applicable Permits**" means all clearances, permits, authorisations, permissions, consents, exemptions, licences, no-objection certificates and approvals required to be obtained or maintained by the Licencee in terms of this Agreement in relation to the refurbishment, operation, maintenance and management of the Licensed Premises, under or pursuant to any Applicable Law, during the subsistence of this Agreement.
- 1.1.6 "**Associate**" means, in relation to an entity ("**Primary Entity**"), another entity who

Controls, or is controlled by, or is under the common control of such Primary Entity. For the purpose of this definition, "control" shall mean, the ownership, directly or indirectly, of more than 50% (fifty percent) of the shares or other ownership interest of an entity.

- 1.1.7 "**Bid**" shall collectively mean the Technical Bid including the initial price offer, the Financial Bid and Supporting Documents, submitted by the Successful Bidder in accordance with the terms and conditions of the Tender Document.
- 1.1.8 "**Brand**" shall mean, the trademark registered in, (a) India in accordance with the provisions of the Trade Marks Act, 1999, or (b) any jurisdiction other than India in accordance with the applicable law in such jurisdiction, in each case, under which an entity is operating and managing hotel(s)/resort(s).
- 1.1.9 "**Business Day**" shall mean reference to a day other than a Saturday, a Sunday and public holidays, on which banks in New Delhi, India and NDMC are generally open for business.
- 1.1.10 "**Coercive Practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any Person or property to influence any Person's participation or action in the Bidding Process or the issuance of the Letter of Award or the execution of the Definitive Documents.
- 1.1.11 "**Control**" shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.12 "**Corrupt Practice**" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the Bidding Process. For avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Licensor who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Letter of Award or has dealt with matters concerning the Definitive Documents or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one (1) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Licensor, shall be deemed to constitute influencing the actions of a Person connected with the Bidding Process.
- 1.1.13 "**Definitive Documents**" shall mean collectively (i) this Agreement; (ii) the Occupation Letter; (iii) Letter of Award; and (iv) such other agreements and documents, entered into/ to be entered into between the Licensor and the Licensee, in accordance with this Agreement and/or the Tender Document.
- 1.1.14 "**Director**" shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.15 "**Due Date**" means:
- (i) in relation to the Licence Fee, the tenth (10th) day of the relevant month for which Licence Fee is to be paid, except that the Effective Date will be the due date for the payment of the Licence Fee for the first month; and
 - (ii) in relation to all other amounts payable to the Licensor, the thirtieth (30th) day from the date of invoice issued by the Licensor and if no invoice is issued, the thirtieth (30th) day from the date the Licensor intimates the Licensee through a

written notice that payment has been incurred or discharged by the Licensor on behalf of or for the benefit of the Licencee in terms of this Agreement. If Due Date is not a Business Day, the obligation to make all payments on the Due Date must be discharged on the immediately preceding Business Day.

- 1.1.16 "**Effective Date**" shall mean the date on which the Licensor provides the physical occupation of the Licensed Premises to the Licencee on 'As Is Where Is' Basis, as evidenced by execution and delivery of an Occupation Letter.
- 1.1.17 "**Encumbrance**" means any lien, mortgage, charge, pledge, hypothecation, pre-emption right or any other right, interest, or claim of any kind asserted or obtained by any Person on or against the Licensed Premises or, against the Licensor in relation to the Licensed Premises, whether by contract or otherwise;
- 1.1.18 "**Escalations**" shall have such meaning as set out in Clause 4.1.6.
- 1.1.19 "**Escalation Rate**" means (i) the annual rate of inflation (based on final Wholesale Price Index (WPI) for 'All Commodities') for the relevant Financial Year, as and when published by the Government of India (as of the date of this Tender Document, it is published on the website of the Office of the Economic Adviser, Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion), or (ii) if the annual rate of inflation (based on final Wholesale Price Index (WPI) for 'All Commodities') ceases to be published by the Government of India, the annual rate of inflation for the relevant Financial Year based on any appropriate substitute benchmark for WPI as published or prescribed by the Government of India.
- 1.1.20 "**Financial Year**" shall have the meaning ascribed to it under the Companies Act, 2013.
- 1.1.21 "**Fixtures**" shall mean all fixtures and fittings installed or placed in or affixed to the Licensed Premises from time to time;
- 1.1.22 "**Fraudulent Practice**" means a misrepresentation or omission or nondisclosure or suppression of facts or information or disclosure of incomplete or incorrect facts or information, in order to influence in any manner, directly or indirectly, the Bidding Process or the issuance of the Letter of Award or the execution of Definitive Documents.
- 1.1.23 "**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 15.1.
- 1.1.24 "**Governmental Authority**" means: (a) central, state, local, municipal; (b) governmental or quasi-governmental authority of any nature; (c) individual, entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing power or authority by virtue of Applicable Law.
- 1.1.25 "**Gross Revenue**" of the Licensed Premises for any Financial Year shall mean the total amount of revenue and receipts of every kind (from both cash and credit transactions) derived by the Licencee from the operation of the Licensed Premises and

its facilities, as certified by the statutory auditors of the Licencee, including receipts from room occupancy charges, telephone, telefax and telex charges, laundry, sale of food, beverages, liquor, recreational amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, receipts from vending machines; parking, commercial or other spaces on account of rent and / or licence fee from the sub-licencees of every description and kind, and the recovery in respect of any other service or facility provided by the Licencee to the users / guests of the said Licensed Premises, which are availed/ realized by the Licencee from an outside party(ies) at a consideration BUT shall exclude and be arrived at after deducting the following:-

- (i) all statutorily applicable indirect taxes such as luxury tax, sales tax, entertainment tax, expenditure tax, service tax, goods & services tax and the like by whatever name called now or in future, which the Licencee has agreed to pay or is bound to pay;
- (ii) revenue on sale of assets of capital nature owned by the Licencee; and
- (iii) interest income from investments made.

1.1.26 {“**Hotel Brand Owner**” shall mean the entity which is partnering with the Licencee in accordance with Clause 3.1.2 of the Tender Document and submitted the joint undertaking along with the Licencee under the terms of the Tender Document, and it and/or its Associate(s) own Brand(s) under which it and/or its Associate(s) operate and manage hotel(s)/resort(s) in India. }

1.1.27 "**Letter of Award**" means the letter issued by the Licensor in the format specified in the Tender Documents, confirming the selection of the Successful Bidder.

1.1.28 "**Licence Fee**" has the meaning assigned to it in Clause 4.1.

1.1.29 "**Licence Period**" has the meaning assigned to it in Clause 3.1;

1.1.30 "**Licencee Event of Default**" has the meaning assigned to in Clause 16.1

1.1.31 "**Licensed Premises**" has the meaning assigned to in Recital A;

1.1.32 "**Licensor Representative**" shall mean any Person authorized by the Licensor;

1.1.33 "**Liquidated Damages**" has the meaning assigned to in Clause 16.2.5;

1.1.34 {“**Management Agreement**” shall mean the contract entered into between the Licencee and the Hotel Brand Owner (which submitted the joint undertaking under the Tender Document) providing for, *inter alia*, the following:

- (a) The term of such contract is for at least 10 years from the Effective Date;
- (b) The operation and management of the Licensed Premises will be conducted under a Brand owned by the Hotel Brand Owner or its Associates; and
- (c) The terms of the contract are in conformance with the terms and conditions specified in the Tender Document and this Agreement”¹

¹ Applicable only in the event that the Licencee had partnered with a Hotel Brand Owner during the Bidding Process for meeting the eligibility criteria under the Tender Document.

- 1.1.35 "**Master Plan**" means the master plan for Delhi as in force from time to time.
- 1.1.36 "**Measurement Period**" shall have the meaning ascribed to it in Clause 4.1.7.
- 1.1.37 "**Minimum Guarantee Fee**" shall mean a sum of Rs. 2,96,47,101/- (Rupees Two Crore Ninety Six Lakh Forty Seven Thousand One Hundred and One only) per month plus Escalations as per Clause 4.1.6.
- 1.1.38 "**Person**" means any natural person, limited or unlimited liability company, corporation (including any non-profit corporation), partnership (whether registered, unregistered, general, limited or unlimited), sole proprietorship, unincorporated association, joint venture, joint stock company, Hindu undivided family, estate, trust, firm, union, association, Governmental Authority, government or other enterprise, association, organization or trust or entity whether or not required to be incorporated or registered under law or any agency or political subdivision thereof or any other entity that may be treated as a person under Applicable Law;
- 1.1.39 "**Performance Security**" shall mean performance security for an amount equal to Rs. 35,57,65,212 (Rupees Thirty Five Crore Fifty Seven Lakh Sixty Five Thousand Two Hundred and Twelve only) for the first Performance Security and an amount equal to twelve (12) times the Minimum Guarantee Fee of the month in which the Performance Security is being renewed for every renewed Performance Security. The Performance Security is to be deposited/ submitted by the Licencee to the Licensor, either (i) through RTGS (real time gross settlement) or NEFT (national electronic funds transfer) or IMPS (Immediate Payment Service) into the designated bank account of the Licensor (no interest shall be payable in relation to such amounts) or, (ii) in the form of an unconditional, irrevocable on demand bank guarantee (in the format specified in **Annexure V** of Tender Documents for the first Performance Security and as per the format provided in **Schedule 4** of this Agreement for every renewed Performance Security), in favour of the Licensor as security against performance by the Licencee of its obligations under the Definitive Documents and the Tender Documents including payment of all amounts due and payable as per terms and conditions of this Agreement and the Tender Documents.
- 1.1.40 "**Occupation Letter**" shall mean the letter issued by the Licensor substantially in the form specified in **Schedule 2** hereto and accepted by the Licencee on the Effective Date which forms an integral part of this Agreement.
- 1.1.41 "**Occupation Takeover Letter**" shall mean the letter issued by the Licensor substantially in the form specified in **Schedule 3** hereto on the date of takeover of occupation of the Licensed Premises from the Licencee by the Licensor in accordance with the terms of this Agreement.
- 1.1.42 "**Refurbishment Works**" means all works/ activities including repair, renovation, upgradation, improvement, reconfiguration of room/halls or other areas, change in placement of offices, retail areas, restaurants, installation/replacement of Fixtures, furniture etc. that the Licencee may undertake at or within the Licensed Premises with prior written approval of the Licensor and in accordance with Clause 2.3 and other provisions of this Agreement and the Applicable Laws.
- 1.1.43 "**Restrictive Practice**" means forming a cartel or a group or association or arriving at

any understanding or arrangement, whether or not in writing, with the objective of restricting or manipulating or compromising, whether directly or indirectly, in the conduct of a full, fair and transparent competition in the Bidding Process.

1.1.44 "**Revenue Share**" shall mean [insert actual percentage i.e. Highest Price Offer (as defined in the Tender Document) based on e-auction outcome to be inserted here].

1.1.45 "**Rs.**" or "**INR**" or "**Rupee**" means Indian Rupee, being the lawful currency of the Republic of India.

1.1.46 "**Subsidiary**" shall mean a company in which the Bidder holds more than 50% (fifty percent) of the total share capital or voting rights.

1.1.47 "**Successful Bidder**" shall have the meaning as set forth in Recital C.

1.1.48 "**Taxes**" shall mean and include all general and special taxes, duties and levies, whether ordinary or extraordinary, including existing and future assessments for property, income, goods or services of any description by whatever name called now or in future which may be lawfully charged, assessed, or imposed upon all or any portion of the Licensed Premises (as the same may be increased or diminished from time to time during the Licence Period) on both land and all improvements contained thereon and/or the Licensee's business;

1.1.49 "**Tender Document**" shall mean the tender document no. [insert tender document no] dated [insert date] issued by the Licensor for inviting bids for the Licensed Premises along with its Annexure, exhibits, attachments, any addenda issued to it from time to time, and any other document issued pursuant hereto including all written responses, amendments and clarifications issued by the Licensor.

1.1.50 "**Undesirable Practice**" means:

- (i) establishing any contact by any means whatsoever, directly or indirectly, with or without the use of any Coercive Practice, with any Person or Persons connected with or employed or engaged by the Licensor, with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process, the selection or non-selection of a Bidder, the issuance of the Letter of Award or the execution of the Definitive Documents; or
- (ii) violation of any Applicable Law.

1.1.51 "**Upfront Fee**" has the meaning assigned to it in Clause 4.3.1.

1.2 Principles of interpretation

Unless the context of this Agreement otherwise requires:

1.2.1 References in the singular shall include references in the plural and vice versa;

1.2.2 Any reference in this Agreement to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision, and to all statutory instruments, orders and regulations for the time being made pursuant to it or

deriving validity from it, as may be, from time to time, amended, modified, extended or re-enacted, whether before or after the date of this Agreement.

- 1.2.3 The words "hereof," "herein", "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "include" and "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import.
- 1.2.4 The headings in this Agreement are intended for convenience only and shall not, in any way, affect the meaning or construction of any provision therein.
- 1.2.5 References to a Clause, Schedule and Annexure shall, except where the context otherwise requires, be a reference to the Clause, Schedule and Annexure to this Agreement;
- 1.2.6 The words "include" and "including" are to be construed without limitation; and
- 1.2.7 References to days, months and years are references to calendar days, calendar months and calendar years respectively.
- 1.2.8 The Recitals, Schedules and Annexure to this Agreement form an integral part of this Agreement and will be of full force and effect as though they were expressly set out in the body of the Agreement.

2. LICENSED PREMISES

- 2.1 Grant of licence - Subject to the provisions of this Agreement and relying on the representations, warranties, covenants and undertakings made by the Licencee in this Agreement and by the Successful Bidder in its Bid submitted to the Licensor, the Licensor hereby grants unto the Licencee with effect from the Effective Date, the leave and licence and permission to enter into and use the Licensed Premises for the sole and exclusive purpose of operating a 5 star hotel under a Brand together with all necessary facilities and amenities, as permitted under Clause 5.3 of this Agreement. Save as aforesaid, the Licencee shall have no right, title or interest in or to the Licensed Premises (including without limitation, the land and the structure/ building standing/ constructed/ to be constructed on the said land parcel) or Fixtures (other than those Fixtures which the Licencee shall be entitled to remove in accordance with Clause 2.3.3) therein and shall not be entitled to claim the right of lessee, sub-lessee, tenant or any other interest in the Licensed Premises, it being specifically agreed and declared in particular that the Licencee shall not be deemed to be in possession of the Licensed Premises.
- 2.2 The licence hereby granted with respect to the Licensed Premises (including all equipment, installations and Fixtures) is on 'As Is Where Is Basis'. Except as expressly set out herein, the Licensor makes no representation in relation to the Licensed Premises and shall not have any liability in relation to the Licensed Premises. The Licencee confirms having inspected and examined the Licensed Premises including all equipment, installations and Fixtures thereto or thereon and fully understands and comprehends the requirements of the Licensed Premises being

taken on leave and licence basis. The Licencee also confirms full satisfaction as to the suitability and viability of the Licensed Premises for operating a 5 star hotel under a Brand and other allied uses permitted in Clause 5.3 herein and unequivocally agrees not to seek or make any claim, damages, reimbursement, compensation or any other consideration, whatsoever on this account from the Licensor. The Licencee also confirms having made independent assessment of taking the Licensed Premises on leave and licence and no future claim whatsoever regarding any change in market or business conditions shall be cited or used by it as an alibi or excuse for non-payment of the Licence Fee and/or non-performance of any other terms and conditions of this Agreement.

2.3 Refurbishment Works

2.3.1 The Licencee shall be entitled to carry out the Refurbishment Works at the Licensed Premises, at its own risk, cost and expense (without any diminution or adjustment in the Licence Fee), subject to compliance with the following conditions:

- (i) The Refurbishment Works shall not result in any structural damage to the Licensed Premises and the Licencee shall not break or demolish any part of the Licensed Premises, unless otherwise specifically permitted by the Licensor in writing;
- (ii) the Licencee has, if required under the Applicable Law, including but not limited to the New Delhi Municipal Council Act, 1994 and the rules and regulations framed thereunder, sought the prior written consent from the Licensor for carrying out such Refurbishment Works and shall have submitted to the Licensor, detailed plans and specifications setting out the nature of Refurbishment Works in such detail and manner as the Licensor may require and the likely time period within which the same will be completed. The Licensor shall be required to communicate its decision in writing in accordance with the relevant provisions of the New Delhi Municipal Council Act, 1994 and the rules and regulations framed thereunder;
- (iii) the Licencee shall comply with all Applicable Laws and the Master Plan and shall obtain and maintain all Applicable Permits from relevant Governmental Authority as are required to carry out such Refurbishment Works;
- (iv) the Licencee shall make all endeavors to complete the Refurbishment Works within a period of eighteen (18) months from the Effective Date;
- (v) the Licencee shall have obtained and shall maintain a comprehensive building insurance policy covering the Licensed Premises against fire, earthquake, other natural calamities, theft, robbery and such other insurable risks as may be reasonably stipulated by the Licensor, prior to commencement of any Refurbishment Works; and
- (vi) the Refurbishment Works shall not cause any nuisance, disturbance or inconvenience to any Person within the neighbourhood.

- 2.3.2 The Refurbishment Works initiated by the Licencee at the Licensed Premises shall be performed by the Licencee in a good workmanlike manner and in compliance with all Applicable Laws and in accordance with the terms of this Agreement.
- 2.3.3 The Licencee hereby agrees and acknowledges that any and all alterations, additions, Refurbishment Works made and/or to be made or installed by the Licencee at the Licensed Premises and which, in any manner are attached to the floors, walls or ceilings (including, without limitations, any linoleum or other floor covering of similar character which may be cemented or otherwise adhesively affixed to the floor, and any heating, ventilating and/or air-conditioning equipment), the removal of which may cause any structural damage to the Licensed Premises, shall remain upon the Licensed Premises, and at the expiry of the Licence Period or early termination of this Agreement, be surrendered by the Licencee to the Licensor without any cost to the Licensor along with the Licensed Premises as part thereof without any damage or injury, unless the Licensor provides written notice to the Licencee that the Licensor requires the removal of such alteration, addition, Refurbishment Works, in which case the Licencee shall repair, at its own cost and expense, any and all damages caused by the Licencee to the Licensed Premises resulting from such removal. This shall, however not apply to the usual Fixtures and furniture placed by the Licencee at the Licensed Premises, the removal of which does not cause any structural damage to the Licensed Premises, during the Licence Period, at its own cost and expense and the Licencee shall be entitled to remove such Fixtures and furniture from the Licensed Premises, upon the expiry of the Licence Period or early termination of this Agreement provided:
- (i) the Licencee is then not in default of any of its obligations under the Definitive Documents and/or the Tender Documents; and
 - (ii) the Licencee removes such Fixtures and furniture within thirty (30) days from the date of expiry of Licence Period or early termination of this Agreement, failing which such Fixtures and furniture shall after the expiry of thirty (30) days vest exclusively with the Licensor, free and clear of any claims of the Licencee or any Person claiming by, through or under the Licencee and the Licensor shall be fully protected in taking such action with respect to such property (including, without limitation, disposal thereof and forfeiting the proceedings out of such disposal) as it would be entitled to take as the sole owner thereof.

3. LICENCE PERIOD; EFFECTIVE DATE

- 3.1 Licence period - Subject to compliance by the Licencee of each of the terms and conditions set out under this Agreement and timely performance of all its obligations set out hereunder including timely payment of Licence Fee to the Licensor, the licence hereby granted to the Licencee shall commence from the Effective Date and shall remain in force for a period of thirty three (33) years thereafter (the "**Licence Period**"), unless otherwise, (a) terminated at an earlier date in accordance with the provisions of this Agreement, or (b) extended in accordance with Clause 15.3. The Licence Period shall be inclusive of the Effective Date as well as the last day of the Licence Period.

- 3.2 The Licensor shall have the right to terminate this Agreement, in accordance with Clause 17.3. Upon expiration of the Licence Period or termination of this Agreement in accordance with Clause 17.3, the licence hereby granted shall stand cancelled and revoked forthwith but without prejudice to the rights of the Licensor against the Licencee in respect of any matter or thing occurring or arising prior to such termination or expiration.
- 3.3 On expiry of the Licence Period or early termination of this Agreement by the Licensor, the Licencee shall handover to the Licensor, vacant and peaceful possession of the Licensed Premises, together with the Fixtures (subject to Clause 2.3.3), free from all Encumbrances and originals of all Applicable Permits and other documents relating to the Licensed Premises, within thirty (30) days of such expiry or termination, and shall execute such instrument(s) and deeds as the Licensor may require the Licencee to execute. The Licensor shall issue an Occupation Takeover Letter to the Licencee on the date the Licensor resumes or takes over exclusive occupation of the Licensed Premises. The Licencee hereby confirms that if it has failed to handover vacant and peaceful occupation of the Licensed Premises to the Licensor within the aforesaid period, the Licensor shall be absolutely entitled to initiate such action and proceedings as it may deem necessary including taking over the absolute possession and occupation of the Licensed Premises without any further notice or deed, absolutely prevent and restrain the Licencee and its employees and agents from entering or using the Licensed Premises in any manner whatsoever and the Licencee further confirms that all risks, losses, Taxes, liabilities and payments arising in connection with the Licensed Premises for the period during which the Licencee is in occupation of the Licensed Premises are and shall forever remain the absolute liability and responsibility of the Licencee alone and the Licensor shall assume no liability, responsibility or obligation, monetary or otherwise, in relation to the period during which the Licencee was in occupation of the Licensed Premises.

4. LICENCE FEE AND MANNER OF PAYMENT

4.1 Licence Fee

- 4.1.1 In consideration of the Licensor granting to the Licencee, the licence for operation, management and maintenance of the Licensed Premises, the Licencee shall pay to the Licensor, the monthly licence fee (the “**Licence Fee**”) which shall be **the higher of;**

(a) the monthly Gross Revenue *multiplied by* the Revenue Share; or

(b) the Minimum Guarantee Fee,

in each case submitted by the Licencee in accordance with **Schedule 5**.

Through RTGS/ NEFT/ IMPS mechanism in to the following bank account of the Licensor:

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

- 4.1.2 The Licensor shall notify any change in the aforesaid bank account details to the Licencee in writing. The Licence Fee shall accrue on a daily basis, beginning from the first day of the month in which the Effective Date falls, but shall be payable in advance on the Due Date of the relevant month. During the refurbishment period of eighteen (18) months, the Licence Fee shall be adjusted against the Upfront Fee. Upon the occurrence of a Licencee Event of Default the Licensor shall be entitled to appropriate the entire balance Upfront Fee and the Performance Security. The Licensee agrees that the amounts so forfeited represent genuine estimate of losses and damages suffered by the Licensor due to the Licencee Event of Default.
- 4.1.3 The Licence Fee for each month shall be payable by the Licencee to the Licensor on the Due Date in accordance with Clause 4.1.1.
- 4.1.4 The Licencee shall provide to the Licensor, thirty (30) days prior to the start of each Financial Year, an estimate of the Gross Revenue for the Financial Year and a statement detailing the monthly Licence Fee payable based on such estimated Gross Revenue as per the format provided in **Schedule 5**. Provided that, (i) if the Effective Date falls between March 1 and March 31 (inclusive of both dates), the Licencee shall provide on the Effective Date, an estimate of the Gross Revenue for the upcoming Financial Year and the monthly Licence Fee payable based on such estimated Gross Revenue as per the format provided in **Schedule 5** or (ii) if the Effective Date falls either on or after April 1, the Licencee shall provide on the Effective Date, an estimate of the Gross Revenue for the current Financial Year and the monthly Licence Fee payable based on such estimated Gross Revenue as per the format provided in **Schedule 5**.
- 4.1.5 After the Escalation Rate for a Financial Year is available, the Licencee shall submit an amended and revised **Schedule 5** at least 10 (ten) days prior to the first Due Date falling in the immediately following Measurement Period. In the event that:
- (a) the Licencee is required to pay an additional amount to the Licensor over and above the amount of Licence Fees already paid on account of revision of the Minimum Guarantee Fees calculated in accordance with Clause 4.1.6 for the Measurement Period in which the Escalation Rate is available, the Licencee shall pay such balance amounts on or before the first Due Date falling in immediately following Measurement Period; or
 - (b) the Licencee has paid excess amounts to the Licensor over and above the amount of Licence Fees already paid on account of revision of the Minimum Guarantee Fees calculated in accordance with Clause 4.1.6 for the Measurement Period in which the Escalation Rate is available, such excess amounts paid by the Licencee will be adjusted against the amount due as

Licence Fee on the first Due Date falling in the immediately following Measurement Period by reducing such Licence Fee by an amount equal to the aforesaid difference. In the event that such excess amount is greater than the amount due as Licence Fee on the first Due Date falling in the immediately following Measurement Period, the balance amount required to be adjusted will be reduced from the amount of the Licence Fee payable by the Licencee on Due Dates subsequent to the first Due Date falling in the immediately following Measurement Period until such excess amount has been fully adjusted.

4.1.6 Escalation

The Minimum Guarantee Fee shall be subject to revisions throughout the Licence Period in the form of:

- (i) Annual revision at the Escalation Rate, on the first day of every Financial Year falling after a period of eighteen (18) months after the Effective Date; and
- (ii) In the event the Licencee is unable to, for any reasons whatsoever, make the Licensed Premises fully operational within a period of eighteen (18) months from the Effective Date, then till such time the Licensed Premises are not fully operational, the Minimum Guarantee Fee shall be subject to revisions in the form of escalation at the simple rate of 3% (three per cent) monthly (i.e. 36% per annum), commencing from the expiry of eighteen (18) months from the Effective Date till the time the Licensed Premises becomes fully operational, as declared by the Licencee and approved by the Licensor. Provided that such Escalation for delay in making the Property fully operational will not be applicable after the Property is made fully operational, and the Minimum Guarantee Fee shall be calculated after applying Escalation in accordance with paragraph 4.1.6 (i) above.

For the avoidance of any doubt, if both sub-clauses (i) and (ii) are applicable, the escalations provided therein shall be cumulatively applied.

For the purposes of this Agreement, the escalation in sub-clauses (i) and (ii) shall above shall collectively be referred to as “**Escalation**”.

4.1.7 Reconciliation and Adjustments

The Licence Fee shall be reconciled (i) semi-annually on the basis of the latest half yearly financial statements; and (ii) on the basis of audited accounts as soon as the same are available in respect of the relevant Financial Year, to determine the difference between Licence Fee payable and the Licence Fee that has been paid to the Licensor in respect of the relevant period. Each such period of reconciliation shall be referred to as a “**Measurement Period**”. The Licencee shall provide a reconciliation statement as per the format provided in **Schedule 6**.

The difference between the License Fee actually paid and the Licence Fee payable pursuant to such reconciliation, whether positive or negative, shall be adjusted against the amount due as Licence Fee on the immediately following Due Date. For example, (a) if there is any positive difference between (i) the Licence Fee payable as determined by reference to the financial statements/ audited accounts, and (ii) the

Licence Fee paid to the Licensor, each for the relevant Measurement Period, the Licencee shall make good such deficiency in the License Fee on the immediately following Due Date by paying such further amounts to the Licensor; and (b) if there is any negative difference between (i) the Licence Fee payable as determined by reference to the financial statements/ audited accounts, and (ii) the Licence Fee paid to the Licensor, each for the relevant Measurement Period, such excess amounts paid by the Licencee will be adjusted against the amount due as Licence Fee on the immediately following Due Date by reducing such Licence Fee by an amount equal to the aforesaid negative difference. In the event that such excess amount is greater than the amount due as Licence Fee on the immediately following Due Date, the balance amount required to be adjusted will be reduced from the amount of the Licence Fee payable by the Licencee on Due Dates subsequent to the immediately following Due Date until such excess amount has been fully adjusted.

Provided that the first Measurement Period shall commence on the Effective Date and end on the immediately following (i) September 30th if the Effective Date falls between April 1 to September 30 of the year; or (ii) March 31st in every other case.

Provide further that, the last Measurement Period shall commence on the day falling immediately after the preceding Measurement Period and end on the last date of the Licence Period. Any Licence Fee payable by the Licencee, pursuant to reconciliation of fees in respect of the last Measurement Period of the Licence Period, will be payable within fifteen (15) days of such reconciliation, failing which the Licensor at its sole discretion may adjust the same against the Performance Security.

Notwithstanding anything herein contained, the Licence Fee paid or payable shall not be less than the Minimum Guarantee Fee.

4.2 **Other Charges**

4.2.1 Utility Charges - During the Licence Period, the Licencee shall be responsible for and shall make, on a regular and timely basis, payments for all utility charges in respect of the Licensed Premises, including water, electricity, telecommunications, internet, cable charges, municipal solid waste, etc. All such payments shall be made by the Licencee directly to the service provider(s) providing such services and shall keep and hold the Licensor harmless and indemnified in this regard.

4.2.2 Service Tax/ GST/ VAT & Other Taxes - It is specifically agreed by the Licencee that the Licence Fee is exclusive of all Taxes levied or charged as per Applicable Law and the same shall be borne and paid by the Licencee alone. It is agreed and understood that each Party shall bear their respective income tax arising out of the Licence granted under this Agreement.

4.3 **Upfront Fee**

4.3.1 The Licencee has paid to the Licensor a total non-refundable sum of Rs. 53,36,47,818 (Rupees Fifty Three Crore Thirty Six Lakh Forty Seven Thousand Eight Hundred and Eighteen Only) (the “**Upfront Fee**”). An amount of Rs. 26,68,23,909 (Rupees Twenty Six Crore Sixty Eight Lakh Twenty Three Thousand Nine Hundred and Nine only) being equivalent to 50% of the Upfront Fee has been paid by the Licencee through [RTGS/ NEFT/ IMPS] [insert payment details such as UTR No. etc.] on [insert date]

prior to the issuance of the Letter of Award and the balance 50% has been paid through [RTGS/ NEFT/ IMPS] [insert payment details such as UTR No. etc.] on [insert date] prior to the execution of this Agreement.

4.3.2 The Upfront Fee paid by the Licencee to the Licensor shall be appropriated in the manner set out in Clause 4.1.2.

4.4 **Performance Security**

4.4.1 The Licencee has furnished the first Performance Security to the Licensor within five (5) months from the issuance of Letter of Award. The Performance Security shall be held by the Licensor as security against performance of its obligations by the Licencee under the Tender Document and the Definitive Documents. The Performance Security shall be returned in accordance with Clause 18.1.4 and other provisions of this Agreement.

4.4.2 If the Performance Security has been submitted in the form of an unconditional and irrevocable bank guarantee, then the following shall apply. The Performance Security shall initially be valid for a period of three (3) years. At least sixty (60) days prior to expiry of each Performance Security, the Licencee shall procure and submit a new Performance Security, in the form of an irrevocable and unconditional bank guarantee, payable at New Delhi, from an acceptable bank as per the format provided in **Schedule 4**, for an amount equal to twelve (12) times the Minimum Guarantee Fee of the month in which the Performance Security is being renewed and further ensure that the Performance Security shall also remain valid and enforceable until expiry of twelve (12) months after the Licence Period. If the Licencee fails to procure and submit a new Performance Security to the Licensor as aforesaid, the Licensor shall be absolutely entitled to encash the Performance Security without any prior notice or intimation to the Licencee and any failure of the Licencee to renew the Performance Security in accordance with the terms hereof which is valid and until expiry of twelve (12) months after last day of the Licence Period shall constitute a Licencee Event of Default.

4.4.3 If the Performance Security has been submitted in the form of a non-interest bearing cash deposit through RTGS/ NEFT/ IMPS into the designated bank account of the Licensor, then the following shall apply. At least sixty (60) days prior to every third anniversary of the Effective Date, the Licencee shall deposit the required additional amounts as non-interest bearing cash deposit through RTGS/ NEFT/ IMPS into the designated bank account of the Licensor such that the total amount of non-interest bearing cash deposited to the Licensor as Performance Security is equal to twelve (12) times the Minimum Guarantee Fee of the month in which the Performance Security is being renewed. If the Licencee fails to deposit such additional amounts to the Licensor as aforesaid, the Licensor shall be entitled to forthwith appropriate the Performance Security without any prior notice or intimation to the Licencee and any failure of the Licencee to submit and maintain the Performance Security at all times shall constitute a Licencee Event of Default.

4.4.4 The Licensor shall be entitled to appropriate or encash the Performance Security at any point in time during the Licence Period or within twelve (12) months after expiry of the Licence Period or early termination of this Agreement by the Licensor:

- (i) in the event of any breach of any of the terms or conditions of this Agreement and/or the Definitive Documents, including upon occurrence of a Licencee Event of Default by the Licencee; or
 - (ii) against any amount imposed as a penalty and adjustment for all losses/damages suffered by the Licensor for any non-compliance with this Agreement and/or the Tender Documents; or
 - (iii) against any amount which the Licensor becomes liable to pay or discharge to any Government Authority and/or third parties due to any default of the Licencee or any of its servant/ agent; or
 - (iv) against any payment/ fine made under the order/judgment of any court, tribunal or statutory authority or any Person working on their behalf; or
 - (v) against any other amount including the Licence Fee that is due and payable to the Licensor but has remained unpaid after the Due Date thereof under the terms of the Definitive Documents and/or the Tender Documents.
- 4.4.5 In case of any appropriation or encashment of Performance Security by the Licensor, the Licencee shall forthwith but in any event not later than seven (7) Business Days after such appropriation, furnish to the Licensor, a replacement Performance Security so as to ensure that the Licensor has, at all times, Performance Security equal to twelve (12) times the Minimum Guarantee Fee of the month in which the Performance Security was submitted/ renewed as per the terms of this Agreement. In the event of non-receipt/ inadequate receipt/ delayed receipt of the Performance Security by the Licensor from the Licencee, the Licensor shall have the absolute right, exercisable at its discretion, to terminate this Agreement and other Definitive Documents requiring the Licencee to forthwith vacate the Licensed Premises.

4.5 **Default in making payments**

- 4.5.1 The Licence Fee and the other charges payable to the Licensor shall be paid by the Licencee on or before the respective Due Dates. In the event the Licencee fails or neglects to make the aforesaid payments on or prior to the Due Dates, the Licencee shall be liable to pay interest on the unpaid amount at the rate of 15% p.a. (fifteen per cent per annum) commencing immediately after the Due Date, to be compounded annually and continuing until the date of actual payment by the Licencee. Any failure of the Licencee to pay the Licence Fee and the other charges payable within ten (10) days of the Due Date shall constitute a Licencee Event of Default.
- 4.5.2 Without prejudice to the foregoing, the Licensor shall be entitled to appropriate or encash the Performance Security to recover the unpaid Licence Fees at any time after the Due Date thereof.
- 4.5.3 The Licencee hereby indemnifies and shall at all times keep fully and effectually saved, harmless and indemnified the Licensor, its employees, officers, consultants, advisors, representatives, and agents (collectively "**Indemnified Parties**"), from and against all actions, claims, demands, proceedings, losses, damages, costs, charges and expenses which the Licensor may incur, sustain or suffer by reason of non-payment or delayed payment by the Licencee of the amounts or any part thereof in respect of or

relating to the Licensed Premises payable by the Licencee under this Agreement.

5. OCCUPATION OF LICENSED PREMISES; OWNERSHIP; PERMITTED USE; USAGE; ASSIGNMENT AND SUB-LICENSING

5.1 Occupation of Licensed Premises: Subject to the terms of this Agreement, the Licensor shall handover the occupation of the Licensed Premises and the Licencee shall accept such occupation no later than seven (7) Business Days after the Execution Date.

5.2 Ownership of Licensed Premises and Licensor Fixtures - The Licensed Premises along with the land on which the Licensed Premises is constructed and any structural additions/ modifications or expansions at the Licensed Premises carried out by the Licencee complying with the Applicable Laws and the Master Plan pursuant to the written approval by the Licensor shall, at all times be owned by the Licensor and vest with the Licensor, together with all installations of immovable nature such as electric sub-stations, the removal of which is likely to cause damage or deterioration in value of the Licensed Premises, and execution of this Agreement and/or any other Definitive Document shall in no manner be interpreted to mean any transfer or alienation of such rights, interest or entitlements in any manner by the Licensor to the Licencee.

5.3 Permitted Use

5.3.1 It is understood and agreed by the Licencee that, during the Licence Period, the Licensed Premises shall be used and occupied by the Licencee only for operating, managing and maintaining under a Brand, a 5 star hotel as approved by the Ministry of Tourism, Government of India, which is permissible as per Applicable Laws and Master Plan. Any use of the Licensed Premises in violation of Applicable Laws or this Agreement shall constitute a Licencee Event of Default under this Agreement.

5.3.2 Subject to obtaining prior written approval of the Licensor and after taking all necessary permissions as per Applicable Laws and without adversely affecting the structural integrity of the building, the Licencee shall be entitled to change the internal lay-out and room sizes of the Licensed Premises in order to make better utilization of the Licensed Premises. The Licensor shall reserve the right to reject any such request of the Licencee without assigning any reasons.

5.3.3 The Licencee shall use the Licensed Premises with due care and caution and shall, at its own costs and expense, maintain and keep maintained the Licensed Premises and the Fixtures therein, in proper, clean and working condition at all times.

5.3.4 The terrace area will be a part of the Licensed Premises, will be an open area and shall not be used for commercial purposes. The open area at ground floor shall be used for parking of automobiles/ vehicles for users of the Licensed Premises and shall not be used for commercial parking purposes. In case of any conflict between the prescribed use as per this Agreement and the Applicable Law or the Master Plan, the Applicable Law or the Master Plan shall prevail.

5.3.5 The basement should only be used for the permissible purposes as per the Master Plan.

5.4 Assignment/ Sub-letting/ Mortgage, etc.: The Licencee covenants and agrees that the Licencee shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sublet or part with the occupation of the Licensed Premises or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any Person, without the prior written consent of the Licensor. Permission to any third party to operate permissible activities such as offices, retail areas, gymnasium, spa, restaurants, coffee shops, banquet halls, or any other facilities within the Licensed Premises, shall be given only after prior written approval from the Licensor. The contract shall be in compliance with the Applicable Laws and shall be expressly subject to the terms and conditions of the License Agreement. Any permission to third parties to operate or maintain the aforesaid facilities shall be co-terminus with or, less than the Licence Period and upon expiry of the Licence Period or, early termination of this Agreement by the Licensor, all permissions granted to third parties to operate or maintain any facility or amenities within the Licensed Premises as aforesaid shall automatically cease and terminate forthwith and the Licencee shall be obliged to handover vacant and peaceful occupation of the Licensed Premises to the Licensor in terms of this Agreement. Such third party permissions shall not be in contravention of this Agreement and Applicable Laws. The Licensee shall provide a copy of all such agreements executed with third parties to the Licensor within fifteen (15) days of execution of such third party agreement(s).

6. RIGHTS OF THE LICENSOR

6.1 The Licensor shall at all times, be deemed to be in complete control and exclusive possession of the Licensed Premises, and the Licensor and the Licensor Representatives shall, throughout the Licence Period, have the right:

6.1.1 To enter upon the Licensed Premises at any time in the case of an emergency;

6.1.2 By giving a prior notice of twenty four (24) hours, and at the cost of the Licencee, to enter upon and inspect, (i) the Licensed Premises; (ii) the Services provided at the Licensed Premises; (iii) the Fixtures installed at the Licensed Premises; and (iv) the offices of the Licencee at the Licensed Premises;

6.1.3 To inspect and seek copies of:

(i) all Applicable Permits obtained by the Licencee in relation to: (a) the operation and management of the Licensed Premises; (b) ensuring compliance by the Licencee of all Applicable Laws;

(ii) the books of accounts, files, voucher books, documents maintained by the Licencee in relation to the Licensed Premises; and

(iii) such other information and documents as may be deemed necessary or relevant by the Licensor.

6.1.4 Notwithstanding anything to the contrary contained in this Agreement, NDMC shall have the right, but not the obligation, to appoint at its cost and expense from time to

time and at any time, a chartered accountant or an audit firm to audit and verify all books of accounts of the Licencee recording all the receipts of the Licencee, income, expenditure, payments, assets and liabilities in relation to the Licensed Premises, along with all necessary back-up documents including but not limited to memos, vouchers, invoices etc., used to prepare the books of accounts.

- 6.1.5 The Licensor may at any time, in its sole discretion, seek any clarifications and/or any additional information in writing from the Licencee, which may be required by the Licensor to verify all statements, information and documents submitted by the Successful Bidder in response to the Tender Document. The Licencee shall, when so required by the Licensor, as soon as reasonably possible but in any case within 15 (fifteen) days of receipt of such request from the Licensor unless a longer time period is specified by the Licensor, make available in writing at its own cost and expense, all such information, evidence and documents as may be required by the Licensor for such verification.

7. LICENSOR'S COVENANTS

- 7.1 Subject to compliance by the Licencee of the terms of this Agreement and other Definitive Documents, the Licensor covenants to the Licencee as follows:
- 7.1.1 The Licensor shall execute the Occupation Letter and handover occupation of the Licensed Premises on "**As Is Where Is Basis**", free from all Encumbrances, to the Licencee within seven (7) Business Days of the Execution Date and the Licencee shall accept occupation of the Licensed Premises from such date;
- 7.1.2 The Licensor shall be solely responsible for and shall bear and discharge all Taxes, unpaid utility bills and all other charges or liabilities of any nature whatsoever for or in relation to the Licensed Premises that pertain to the period prior to the Effective Date;
- 7.1.3 After the Effective Date, the Licensor shall provide reasonable cooperation to the Licencee in obtaining Applicable Permits that may need to be issued in the name of the Licensor or, otherwise;
- 7.1.4 The Licensor shall not unreasonably withhold its permission for the Refurbishment Works; and
- 7.1.5 If any electric sub-station is located in the basement of Licensed Premises, the same shall be maintained and operated by the Licensor or the Licensor Representatives, who shall at all times have access to the sub-station without any obstruction or hindrance and the Licencee shall not claim any compensation from the Licensor for the space occupied for running the sub-stations. The Licensor shall be responsible for the maintenance of all electric installations and appliances up to the main electricity meter in the Licensed Premises.
- 7.1.6 The Licensor shall perform its other obligations under this Agreement in accordance with Applicable Laws.

8. LICENCEE'S COVENANTS AND UNDERTAKINGS

8.1 The Licencee expressly acknowledges that during the Licence Period it shall be bound to act in a manner consistent with its status as the Licencee and it shall also specifically be bound by covenants as hereinafter stated:

8.1.1 Positive Covenants

- (i) It shall be responsible to procure at its own cost, risk and expense and in a timely manner, and secure and maintain the same in full force and effect, all Applicable Permits required in relation to:
 - (A) the operation and management of the Licensed Premises, under a Brand, as a 5 star hotel as approved by the Ministry of Tourism, Government of India;
 - (B) undertaking the Refurbishment Works; and
 - (C) undertaking other permitted activities within the Licensed Premises as per the terms of this Agreement;
- (ii) It shall submit to the Licensor during the entire Licence Period, on an annual basis, within a period of thirty (30) days of the date on which the audited accounts of the Licencee are approved and adopted at the annual general meeting of the shareholders of the Licencee,
 - (A) Copies of all Applicable Permits applied for and sought by it during the immediately preceding Financial Year;
 - (B) Certified true copy of its audited accounts and financial statements for the immediately preceding Financial Year; and
 - (C) Copy of insurance policies maintained by the Licencee and premium receipts thereof.
 - (D) Payment proofs for all taxes paid, deductions of which have been claimed while calculating the Gross Revenue
- (iii) {The Licencee shall, during the Licence Period, operate and manage the Licensed Premises, under a Brand owned by the Licencee. The Licencee shall be entitled to replace the aforesaid Brand (under which it operates and manages the Licensed Premises) with any other Brand only with the prior written consent of the Licensor. The consent of the Licensor shall not be unreasonably withheld by the Licensor if the Licencee establishes that, as on the date of such request by the Licencee, under the Brand proposed as replacement, continuously in the immediately preceding five (5) years, in aggregate not less than five hundred (500) operational rooms across a maximum of five (5) hotels/ resorts having a minimum 5 star rating with each such hotel/resort having at least one hundred (100) operational rooms, are operated and managed in India by the Licencee. Provided that, the Licencee

shall not replace the Brand (under which it operates and manages the Licensed Premises) with any other Brand prior to the expiry of a period of seven (7) years from the Effective Date unless such proposed brand is owned by the Licencee.} ²

- (iv) {The Management Agreement shall be valid and effective for a period of at least 10 (ten) years. The Licencee shall be entitled to replace the Hotel Brand Owner with any other entity under whose Brand the Licensed Premises will be operated and managed, any time prior to the expiry of the aforesaid period of 10 (ten) years commencing from the Effective Date, only with the prior written consent of the Licensor. The consent of the Licensor shall not be unreasonably withheld by the Licensor if the Licencee establishes that, as on the date of such request by the Licencee, the proposed replacement or its Associate(s) owns a Brand under which, continuously in the immediately preceding five (5) years prior to the date of such request, in aggregate not less than five hundred (500) operational across a maximum of five (5) hotels/resorts having a minimum 5 star rating with each such hotel/resort having at least one hundred (100) operational rooms, are operated and managed in India by such proposed replacement or its Associate(s).

After the expiry of the aforesaid period of 10 (ten) years commencing from the Effective Date or expiry of the Management Agreement, whichever is later, and until the remaining duration of the Licence Period, the Licencee shall:

- (a) at all times have a valid and subsisting management contract with any entity under whose Brand the Licensed Premises will be operated and managed, provided that, at the date of entering into such management contract, the entity or its Associate(s) own a Brand under which, continuously in the immediately preceding five (5) years prior to the date of such contract, in aggregate not less than five hundred (500) operational rooms across a maximum of five (5) hotels/resorts having a minimum 5 star rating with each such hotel/resort having at least one hundred (100) operational rooms, are operated and managed in India; or
- (b) operate and manage the Licenced Premises under its own Brand or a Brand owned by its Associate, provided that, the Licencee or its Associate owns and operates in India, under such Brand, continuously in the immediately preceding five (5) years prior to the date of commencement of such operation and management of the Licensed Premises under the Brand of the Licencee, in aggregate not less than five hundred (500) operational rooms across a maximum of five (5) hotels/resorts having a minimum 5 star rating with each such hotel/resort having at least one hundred (100) operational rooms.} ³
- (v) It shall submit to the Licensor during the entire Licence Period, as soon as

² ² Applicable only in the event that the Licencee had participated as a “standalone entity” or “participating together with 1 (one) Subsidiary” under the Tender Document.

³ Applicable only in the event that the Licencee had partnered with a Hotel Brand Owner during the Bidding Process for meeting the eligibility criteria under the Tender Document.

possible after the last date of each Measurement Period,

- (A) The latest half yearly financial statements or the audited accounts for the relevant Measurement Period.
 - (B) A reconciliation statement for the relevant Measurement Period, stating out the difference between the License Fee actually paid and the Licence Fee payable pursuant to such reconciliation,
- (vi) If a Subsidiary's experience, Turnover and Net Worth was used to meet the Eligibility Criteria under the Tender Document, then the Subsidiary will continue to remain a Subsidiary of the Licencee till the seventh anniversary of the Effective Date. The Licencee shall procure a certificate from the Subsidiary on the first seven anniversaries of the Effective Date that the Subsidiary continues to remain a Subsidiary of the Licencee for the period from the Effective Date to the respective anniversary of the Effective Date.
- (vii) The Licencee shall provide to the Licensor, thirty (30) days prior to the start of each Financial Year, an estimate of the Gross Revenue for the Financial Year and a statement detailing the Monthly Licence Fee payable based on such estimated Gross Revenue. Provided that, (i) if the Effective Date falls between March 1 and March 31 (inclusive of both dates), the Licencee shall provide on the Effective Date, an estimate of the Gross Revenue for the upcoming Financial Year and the Monthly Licence Fee payable based on such estimated Gross Revenue or (ii) if the Effective Date falls either on or after April 1, the Licencee shall provide on the Effective Date, an estimate of the Gross Revenue for the current Financial Year and the Monthly Licence Fee payable based on such estimated Gross Revenue.
- (viii) It shall submit to the Licensor, within a period of fifteen (15) days from the date a request is made by the Licensor, all such information and documents as is reasonably requested by the Licensor.
- (ix) It shall carry out, at its own risk, cost and expense, Refurbishment Works at the Licensed Premises in compliance with Clause 2.3.
- (x) It shall, on and from the Effective Date and till it is in occupation of the Licensed Premises, keep the Licensed Premises and every part thereof, in good order, condition, and repair. The Licensor shall not be responsible to make any improvements or carry out any changes of any kind whatsoever at the Licensed Premises and the Licencee shall solely be responsible for all works required to be carried out at the Licensed Premises, at its own cost, expenses, risk and liability.
- (xi) It shall carry out any and all works including repairs required to be carried out at the Licensed Premises due to damage caused to the Licensed Premises or any part thereof due to any fire or casualty and restore all such portions of and equip them with such Fixtures as are necessary or proper.
- (xii) It shall, at all times till it is in occupation of the Licensed Premises, insure and keep insured, the Licensed Premises, the Fixtures and furniture therein and the

goods/stock in the Licensed Premises, from any and all risks and keep such insurance policies valid and subsisting during the entire Licence Period. All such insurance shall be from a reputed insurance company.

- (xiii) It shall, at all times till it is in occupation of the Licensed Premises, ensure that the Licensed Premises and the land on which the Licensed Premises is constructed remains free from all encroachments and shall take all steps necessary to remove encroachments, if any during the Licence Period. Upon expiry of the Licence Period, the Licensed Premises (along with the land on which the Licensed Premises is constructed) shall be handed over by the Licencee to the Licensor free from all encroachments and Encumbrances, if any.
- (xiv) It shall make optimum utilization of available natural resources.
- (xv) It shall arrange and access at its cost, expense, risk and liability, all infrastructural facilities like water, power and technology, goods, materials, consumables, things and services etc. as may be necessary or required by it at the Licensed Premises and make arrangements and back-up arrangements of the same. The Licensor is neither required to nor shall be obligated to provide any facilities to the Licencee at the Licensed Premises other than specifically set out in this Agreement.
- (xvi) It shall be solely responsible to the Licensor for observance of all provisions of this Agreement and compliance with all Applicable Laws and Master Plan, by itself, its employees, agents, permitted users/occupants, contractors and representatives and their employees and any other Person acting for or under or on behalf of any of the above-mentioned, as fully as if they were the acts or defaults of the Licencee alone.
- (xvii) It shall observe, perform and abide by or otherwise comply with Applicable Laws in so far as the same are applicable to the Licencee, including without limitation provisions of the New Delhi Municipal Council Act, 1994, the Food Safety and Standards Act, 2006, the Prevention of Food Adulteration Act, 1954 (to the extent any provisions of the said legislation have not been repealed by the Food Safety and Standards Act, 2006), in each case including the rules and regulation made thereunder, and the provisions laid down under any other Applicable Law, in respect of the manner and method of running a 5 star hotel.
- (xviii) It shall be liable for and shall indemnify, protect, defend and hold the Indemnified Parties, harmless and indemnified, from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of or in relation to the failure or non-compliance with the terms of this Agreement or the discharge of its obligations under this Agreement or Applicable Laws or Applicable Permits.
- (xix) It shall regularly and punctually pay, without any delay, protest, demur or cavil;
 - (A) to the Licensor, the Licence Fee and all other payments, charges, and

outgoings payable in accordance with this Agreement;

- (B) pay all Taxes relating to the Licensed Premises, on or before the due date of making such payments as set out in this Agreement or as provided under Applicable Laws;
 - (C) pay all other charges and outgoings, including utility charges relating to the Licensed Premises, on or before the due date of making such payments as set out in this Agreement or as provided under Applicable Laws; and
 - (D) pay all other amounts required to be paid by it to relevant Governmental Authorities in relation to operating and maintaining the Licensed Premises including fee/ renewal fee and charges towards applying for and maintaining the Applicable Permits for the Licensed Premises and services/ facilities provided/ to be provided at the Licensed Premises.
- (xx) All payments to be made by the Licencee to the Licensor under or in relation to this Agreement or the Tender Documents shall only be made through RTGS/ NEFT/ IMPS into the bank account of the Licensor details of which are provided in Clause 4.1.1.
 - (xxi) It shall ensure that the Licensed Premises has adequate provisions for fire/ smoke detection, fire safety and all other fire fighting arrangements as may be prescribed by the concerned Chief Fire Officer or any other code/ standard practice or any other Governmental Authority in this behalf.
 - (xxii) It shall be responsible to keep the Licensed Premises and the entire area forming part of it together with its Fixtures and other installations including the air conditioning plant, lifts, electrical installations, boilers, gas installations and other assets, in a safe, sound and working condition. The Licencee shall also be responsible to carry out effective maintenance and repairs, annual or special, as may be required from time to time, including operation of all services at its own cost, including maintenance, repairing and replacement of Fixtures.
 - (xxiii) It shall be further responsible for the maintenance of lawns and open spaces in good condition, at its own cost.
 - (xxiv) It shall employ throughout the Licence Period, qualified staff to manage and operate the Licensed Premises.
 - (xxv) It shall maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and liable for all possible claims and employment related liabilities of the staff employed in relation with the operations and management of the Licensed Premises, and that in no case and for no purposes whatsoever, shall the Licensor be treated as the employer in this regard. The Licencee hereby agrees

to indemnify and keep and hold the Indemnified Parties, harmless and indemnified against any and all claims, damages, expenses or losses incurred or caused to be incurred or suffered by them in this regard;

- (xxvi) It shall handover the actual, vacant and peaceful occupation of the Licensed Premises to the Licensor, free and clear from all Encumbrances and encroachments, and in fully operational and functional condition, upon the expiry of the Licence Period or upon early termination of this Agreement, in accordance with the provisions hereof. The Licensor shall issue an Occupation Takeover Letter to the Licencee on the date of resuming exclusive physical occupation of the Licensed Premises.
- (xxvii) It shall receive and deliver goods and material required by it at the Licensed Premises only at the areas designated for it. It shall keep and maintain the Licensed Premises in a neat manner and ensure that all trash, refuse, and the like, are kept in covered bins/ cans, to ensure hygiene and cleanliness of the Licensed Premises at all times during the Licence Period.
- (xxviii) It undertakes to be in compliance with and perform obligations of the Successful Bidder specified under the Tender Document (to the extent they survive the issue of Letter of Award or, remain to be performed by the Successful Bidder) and its obligations under the other Definitive Documents.
- (xxix) It shall make its own arrangements for daily disposal of all waste generated out of the Licensed Premises at the waste disposal sites approved by the Licensor and in accordance with Applicable Laws. Disposal of waste on or around non-approved sites or in violation of Applicable Law shall make the Licencee liable to fines/penalties prescribed in the Applicable Laws.
- (xxx) It shall obtain and maintain requisite health licence from the Licensor for preparation of food articles within the Licensed Premises, and dish washing will be done only in the kitchen area and nowhere else.
- (xxxi) It shall maintain environmental hygiene and proper sanitation of the Licensed Premises including water closet, toilet etc. at all times during the Licence Period. In this regard, the decision of the Medical Officer of Health of the Licensor shall be final and binding on the Licencee.
- (xxxii) It shall undertake day to day maintenance, watch and ward, sanitation of Licensed Premises including attending to 'no electricity' complaints from meter onward and routine and periodical maintenance of electrical and other installations and engage adequate number of trained personnel for the same. In the event of the failure of the Licencee to carry out effective day to day maintenance of the Licensed Premises and such failure is likely to cause damage to the Licensed Premises, then the Licensor may get the necessary work done on behalf of the Licencee and in that event the Licencee shall pay to the Licensor all the cost and the departmental charges incurred by the Licensor in this regard.
- (xxxiii) It acknowledges that the Licensed Premises have been licensed and same shall

be handed over to the Licencee on '**As Is Where Is Basis**'. The Licencee shall obtain electric and water connections and would get the load for light and power sanctioned in its name after completing all formalities like deposits of the new connections fee etc. and shall bear the electric and water consumption charges by itself. The Licencee shall not exceed the sanctioned electric load and if any additional load is required by the Licencee over and above that what is installed, the same would be sanctioned subject to its feasibility on receipt of such a request and the work of laying cable etc., if necessary, would be got done at the Licencee's cost, to the satisfaction of the Licensor.

- (xxxiv) The Licencee shall, (i) cooperate with the chartered accountant or audit firm appointed by the Licensor in accordance with Clause 6.1.4, and (ii) make available to such chartered accountant or audit firm, its books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities in relation to the Licensed Premises, along with all necessary back-up documents including but not limited to memos, vouchers, invoices etc., used to prepare the books of accounts.
- (xxxv) The Licencee shall, within the timeline specified in Clause 6.1.5, make available in writing at its own cost and expense, all such information, evidence and documents as may be required by the Licensor under Clause 6.1.5.

8.1.2 **Negative Covenants**

- (i) It shall not, either by itself or through its agents, contractor or any other Person, other than a Person authorized by the Licensor, do any act, deed or thing which causes any structural change or damage to the Licensed Premises including any addition or installation of any temporary or permanent structures at the Licensed Premises, unless prior permission has been specifically obtained from the Licensor in writing.
- (ii) It shall not employ or permit to be employed any minor or, allow into the Licensed Premises any Person suffering from any contagious, loathsome or infectious disease.
- (iii) It shall not transfer/ dispose off, let, lease, licence, sub-licence (except as provided in this Agreement) or otherwise alienate the Licensed Premises, the land on which the Licensed Premises is constructed or any part thereof;
- (iv) It shall not do or omit to do any act, deed, matter or thing, which may, in any manner, be in violation of any of the provisions of this Agreement or Applicable Law.
- (v) It shall not do or permit to be done any act whereby the Licensor's right, title, interest or entitlement in or upon the Licensed Premises and/or the land on which the Licensed Premises is constructed is, in any way prejudicially affected, impaired or extinguished.
- (vi) It shall not create or allow to subsist any Encumbrance on the Licensed Premises.

- (vii) It shall not use the Licensed Premises for any illegal or unlawful purposes and shall not use, permit or suffer upon the Licensed Premises or any part thereof, anything which may become a nuisance or annoyance or cause damage to the Licensed Premises or to the guest staying at or visiting the Licensed Premises; and
- (viii) It shall not store at the Licensed Premises, any hazardous/ inflammable material and/or material not required to be stored under Applicable Laws.

9. NO CHANGE IN CONTROL

No change in Control of the Licencee shall be allowed at any time during the Licence Period without prior written approval of the Licensor. The Licencee shall not allow or register any change in its shareholding which results in a change of Control during the Licence Period without prior written approval of the Licensor.

10. CONDITIONS PRECEDENT TO OCCUPATION OF LICENSED PREMISES

Each of the Licensor and the Licencee agrees that this Agreement has been executed no later than six (6) months after the date of issue of Letter of Award by the Licensor to the Licencee, subject to the Licencee having fulfilled the following conditions within the timelines specified therein:

S No.	Condition precedent	Timeline for fulfilment of such condition
(i)	Licencee has paid the Upfront Fee to the Licensor;	Five (5) months from the date of issuance of the Letter of Award
(ii)	Licencee has furnished the Performance Security to the Licensor in accordance with the provisions of this Agreement;	Five (5) months from the date of issuance of the Letter of Award
(iii)	{The Licencee has submitted to the Licensor, a copy of the duly executed Management Agreement.} ⁴	Five (5) months from the date of issuance of the Letter of Award
(iv)	The Licencee has furnished to the Licensor certified true copies of the Licencee's memorandum of association, articles of association, certificate of incorporation and statement of shareholding pattern	Six (6) months from the date of issuance of the Letter of Award
(v)	Main objects of the Licencee as contained in its memorandum of association is development, operation and management of hotels/ resorts/ lodges and provision of allied services;	Six (6) months from the date of issuance of the Letter of Award

⁴ Applicable only in the event that the Licencee had partnered with a Hotel Brand Owner during the Bidding Process for meeting the eligibility criteria under the Tender Document.

11. REPRESENTATIONS AND WARRANTIES

11.1 Licensor's Representations and Warranties

The Licensor represents and warrants the following as on the date of execution of this Agreement:

- 11.1.1 That the Licensor has the power and authority to execute this Agreement and grant the Licence to the Licensee in accordance with the terms of this Agreement and that no other permission/ approval are required by the Licensor.
- 11.1.2 That the Licensed Premises is free from all Encumbrances and any claim or legal action of any nature whatsoever.

11.2 Licensee's Representations and Warranties

The Licensee hereby represents and warrants to the Licensor, as on the date of this Agreement, which representation and warranty shall continue on each day for the entire Licence Period as if made on each such day of the Licence Period that:

- 11.2.1 The Licensee is an entity duly organized and validly existing in accordance with the Applicable Laws of India, has full power and authority to (i) enter into this Agreement; (ii) transact the business in which it is engaged or proposes to be engaged; (iii) undertake the operation and management of the Licensed Premises and all related, ancillary and incidental activities; (iv) do all things necessary or appropriate in respect of the Licensed Premises; (v) execute, deliver, consummate the transactions and perform its obligations contemplated under this Agreement and the other documents, to which it is a party; and (vi) the execution and delivery of this Agreement by the Licensee and its compliance with or performance of the terms and provisions of this Agreement does not and will not (a) contravene provisions of any Applicable Laws or agreement or document to which the Licensee is a party; (b) conflict with or result in any breach of any of the terms and conditions of, or constitute a potential event of default or event of default (howsoever such term is defined or described) under any deed, agreement, contract, instrument or arrangement to which it is a party or to which it may be subject; (c) result in the creation or imposition of any security interest over any present or future assets in favour of any third party; or (d) violate any provisions of its memorandum of association and articles of association.
- 11.2.2 There are no actions, suits, proceedings, or investigations pending or to the best of its knowledge threatened against the Licensee at law or in equity before any court or before any other judicial, quasi judicial or other authority, which may disrupt or interfere with the Licensee's use and enjoyment of the Licensed Premises or prohibit the Licensee from performing its obligations under this Agreement. The Licensee has no knowledge of any violation or default with respect to any other writ, judgment or any decree of any court or any legally binding order, including that of attachment, of any Governmental Authority, which may disrupt or interfere with the Licensee's use and enjoyment of the Licensed Premises or prohibit the Licensee from performing its obligations under this Agreement.
- 11.2.3 The Licensee has all the necessary corporate approvals, permissions and other

- actions (i) to authorize the execution, delivery and performance by it of this Agreement each of such actions is in full force and effect; and (ii) for carrying out its operation including in Delhi.
- 11.2.4 The Licencee is validly existing and no receiver, manager or administrative receiver has been appointed or to the best of the knowledge of the Licencee is likely to be appointed in respect of any part of the undertaking or property of the Licencee and that no resolution has been passed or proposed to be passed and that no petition has been presented for the winding-up of the Licencee or for the making of any administration order.
- 11.2.5 The obligations expressed to be assumed by it in this Agreement constitute its legal, valid, binding and enforceable obligations enforceable in accordance with its terms. This Agreement is admissible in evidence and in proper form for enforcement in all appropriate jurisdictions.
- 11.2.6 The Licencee will use the Licensed Premises only for the use permitted under Clause 5.3 hereof and keep the Licensed Premises open for general public for business during the entire Licence Period, in accordance with the provisions of this Agreement.
- 11.2.7 The Licencee has completed its due diligence in respect of the Licensed Premises and is satisfied with the title of the Licensor.
- 11.2.8 The Licencee has inspected the Licensed Premises and has satisfied itself in all respects in relation thereto including as to the covered area and carpet area of the Licensed Premises, FAR, location, area and state thereof.
- 11.2.9 The Licencee has not dealt with any broker or agent in connection with the consummation of this Agreement and has not paid any bribes, amounts, brokerage, whether in cash or otherwise, to any Person including any officer or employee of the Licensor, to seek the Licence granted hereunder.
- 11.2.10 It is in compliance in all respects with all Applicable Laws and Applicable Permits including those which are necessary or desirable in respect of the conduct of its business, the ownership of assets, in relation to the Licensed Premises or for the development, operation and management of the Licensed Premises.
- 11.2.11 All acts, conditions and things required to be done, fulfilled or performed, and that are necessary or desirable for (a) the due execution, entry, delivery of, performance by it of its obligations, and for the exercise of its rights under this Agreement; (b) ensuring the legality, validity, binding effect or enforceability and admissibility in evidence of this Agreement, in all relevant jurisdictions,
- (i) have been duly done, fulfilled, effected, obtained and performed or will be; and
- (ii) are in full force and effect.
- 11.2.12 Neither the Licencee nor any of its Shareholders/ its Subsidiary or their respective Directors, is an officer, Director or employee (permanent or on contract) of the

Licensor.

- 11.2.13 The Licencee, its Shareholders and its Subsidiary and their respective officers, employees, Directors, representatives, contractors, agents and advisers shall observe the highest standard of ethics during the entire term of the Licence Period in relation to this Agreement.
- 11.2.14 Neither it has nor any of its Shareholders and their respective officers, employees, Directors, representatives, contractors, agents and advisers, directly or indirectly, or through any other Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the Bidding Process, the issuance of the Letter of Award or the execution of this Agreement including the Definitive Documents.
- 11.2.15 It shall pay all stamp duty and registration charges and related fees, costs, charges and expenses in respect of this Agreement and/or any other document pertaining to the licence or any other charges by whatever name called and to whomsoever payable in connection with or otherwise relating to the grant of the licence.
- 11.2.16 All information provided by the Licencee to the Licensor till date is true, complete and accurate in all respects and is not misleading in any respect. Nothing has occurred or been omitted and no information has been given or withheld that results in the information provided to the Licensor being untrue or misleading in any respect.
- 11.2.17 The Licencee has conducted its own independent assessment of the accuracy and completeness of all information relating to the Licensed Premises and the Licensor shall not be responsible in any manner whatsoever in relation to the same.

12. FRAUD AND CORRUPT PRACTICES

- 12.1 The Licencee and its Shareholders and their respective officers, employees, Directors, representatives, contractors, agents and advisers shall observe the highest standard of ethics during the entire term of the Licence Period. Notwithstanding anything to the contrary contained herein or in the Letter of Award or the Tender Document, the Licensor may, at any time, withdraw the Letter of Award and terminate this Agreement and other Definitive Documents, without being liable in any manner whatsoever to the Licencee, if the Licensor determines that the Licencee or any of its Shareholders has, directly or indirectly, or through any Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the Bidding Process, the issuance of the Letter of Award or the execution of the Definitive Agreements. If the Licensor determines that the Licencee or any of its Shareholders or any of their respective officers, employees, Directors, representatives, contractors, agents and advisers, as the case may be, has, directly or indirectly, or through any of other Person, engaged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice and/or Restrictive Practice in the Bidding Process, in the issuance of the Letter of Award or the execution of the Definitive Agreements, then the Licensor shall be entitled to forfeit and appropriate the Upfront Fee and the Performance Security, as damages, and forthwith terminate this Agreement, without prejudice to any other right or remedy that may be available to it under the Tender Document or the Definitive Documents or

under Applicable Law or otherwise.

- 12.2 Without prejudice to the rights of the Licensor under Clause 12.1 above and the rights and remedies which the Licensor may have under the Letter of Award or the Definitive Documents, or otherwise, if the Licencee or any of its Shareholders or any of their respective officers, employees, Directors, representatives, contractors, agents and advisers, as the case may be, is found to have, directly or indirectly, or through any of other Person, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practice during the Bidding Process, or after the issuance of the Letter of Award or the during the Licence Period, then neither the Licencee nor any of its Shareholders or any of their respective officers, employees, Directors, representatives, contractors, agents and advisers, shall be eligible to participate in any tender or tender document issued by the Licensor during a period of five (5) years from the date it is found to have been, directly or indirectly, engaged or indulged in any Corrupt Practice, Fraudulent Practice, Coercive Practice, Undesirable Practice or Restrictive Practices, as the case may be.

13. INSURANCE

- 13.1 Within fifteen (15) days after the Effective Date, the Licencee shall furnish to the Licensor, with certificates of insurance evidencing that the requirements set forth herein are in full force and effect. The Licencee shall provide Licensor with notice of loss or damage to property within forty eight (48) hours after such loss or damage occurs. The limit of any insurance which the Licencee is required to provide pursuant to this Clause 13 shall not limit the liability of the Licencee hereunder.
- 13.2 All policies taken by the Licencee shall be taken from reputed insurance companies, acceptable to the Licensor.
- 13.3 The Licencee shall, at its own cost and expense, obtain and keep in force, during the entire Licence Period (refurbishment phase and operation phase), a policy of comprehensive general liability insurance with broad form endorsement, including personal injury liability, contractual liability, products and completed operations liability and liquor liability (if applicable), insuring the Licensor and the Licencee against any liability arising out of the ownership, use, occupancy or maintenance of the Licensed Premises. The insurance cover would be obtained against all insurable risks, which will, inter alia, include builder's "all risk" (including third party liability), fire, damage and natural calamities, riots, civil commotion, war risks and all other 'force majeure' risks and in addition to the normal insurance cover, will cover the standing charges and loss of profit in the event of any stoppage of business for any reason.
- 13.4 The Licencee shall maintain in full force and effect on all trade Fixtures, machinery and equipment, stock and inventory, improvements and betterments, a policy of all risk/ special form property insurance and covering the full replacement value of such property in an amount adequate to avoid co-insurance. During the Licence Period, proceeds from any such policy of insurance shall be used for the repair and/or replacement of the Fixtures, equipment and other property so insured.
- 13.5 The Licencee shall ensure that the Licensor is named as a loss payee in all the

insurance policies obtained by the Licencee in relation to the Licensed Premises and it shall, within thirty (30) days of obtaining the insurance referred to in this Clause, provide a certified true copy of it to the Licensor for its records and information.

14. EXPANSION AND INCREASE IN LICENCE FEE

14.1 In the event, an increase in the Floor Area Ratio (“**FAR**”) is permissible, at any stage during the Licence Period and the Licencee intends to avail the benefits of such increased FAR in relation to the Licensed Premises as per the Applicable Laws and Master Plan, the Licencee shall obtain the prior written consent of the Licensor. The Licencee shall submit an application specifying the details of the structural additions/ modifications or expansions proposed to be carried out in the Licensed Premises to the Licensor.

Thereafter, the Licensor, at its sole discretion, may provide such consent to the Licencee in accordance with the terms and conditions as it may deem fit. Upon the receipt of such written consent from the Licensor, the Licensee may avail the benefits of the increased FAR and carry out such structural additions/ modifications or expansions at the Licensed Premises, as approved by the Licensor, at its own risk, cost, expense and liability and in compliance with the Applicable Laws and the Master Plan.

In the event, the Licencee avails such benefits and thereby increases the built-up area of the Licensed Premises, the following conditions shall be applicable:

- (i) the Licence Period shall remain unaltered and as defined under Clause 3.1;
- (ii) no rights shall accrue to the Licencee on the structural additions/ modifications carried out in the Licensed Premises pursuant to the increased FAR and such structural additions/ modifications shall become a part and parcel of the Licensed Premises which shall be governed by the terms and conditions of this Agreement; and
- (iii) in case of an increase in the built-up area of the Licensed Premises, the applicable Minimum Guarantee Fee for the subsequent months shall increase on a pro-rata basis.

14.2 The structural additions/ modifications/ expansion work initiated by the Licencee at the Licensed Premises shall be performed by the Licencee in good workmanlike manner and in compliance with all Applicable Laws and in accordance with the terms of this Agreement, only after obtaining prior written approval from the Licensor.

14.3 The Licencee hereby agrees and acknowledges that any and all alterations, structural additions/ modifications/ expansion work made and/or to be made by the Licencee at the Licensed Premises shall become part of the Licensed Premises and for the purposes of this Agreement, any reference to the Licensed Premises, shall on and from the date of such additions/ modifications shall deem to include such additions/ modifications to the Licensed Premises. Further, at the expiry of the licence term or early termination of this Agreement, the Licensed Premises shall be surrendered by the Licencee to the Licensor along with such additions/ modifications, and such

additions/ modifications shall not make any right in favour of the Licensee at any time during or after the License Period.

15. FORCE MAJEURE

15.1 As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence of any or all the below set events, if (a) it affects the ability of the Party claiming the benefit of Force Majeure (the “**Affected Party**”) to perform its obligations under this Agreement (additionally, in the case of the Licensee, if the Licensee is unable to own or operate, all or a substantial part of the Licensed Premises), (b) is beyond the reasonable control of the Affected Party, and (c) the Affected Party could not have prevented or overcome by exercise of due diligence and following good industry practice:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Licensed Premises);
- (b) compulsory acquisition in public interest or expropriation of the Licensed Premises or rights of the Licensee;
- (c) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, riot, insurrection, terrorist or military action, ; or
- (d) any event or circumstances of a nature analogous to any of the foregoing.

15.2 Duty to Report Force Majeure Event

15.2.1 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 which is the subject of any claim for relief under this Clause 15 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.

15.2.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than

7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement. For avoidance of any doubt, the giving of a notice of Force Majeure by any Party to the other Party shall not automatically constitute Force Majeure.

15.2.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (at least weekly) reports containing information as required by Clause 15.2.1, and such other information as the other Party may reasonably request the Affected Party to provide.

15.3 Effect of Force Majeure on the Licence Period

If any Force Majeure Event occurs after the Effective Date, whereupon the Licencee is unable to perform its obligations under this Agreement for an aggregate period exceeding 7 (seven) days in a Financial Year during the subsistence of each such Force Majeure Event, the Licence Period shall be extended by a period, equal in length to the period during which the Licencee was unable to perform its obligations due to such Force Majeure Event.

15.4 Allocation of Costs Arising Out of Force Majeure

15.4.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

Save and except as expressly provided in this Clause 15, 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.

15.5 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a continuous period of 180 (one hundred eighty) days or more, either Party may in its discretion terminate this Agreement by issuing a termination notice to the other Party without being liable in any manner whatsoever for, and upon issue of such termination notice, this 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.

15.6 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence or impact of a Force Majeure Event, such Dispute shall be finally settled in accordance with the dispute resolution provisions set out in Clause 20.3; 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.

15.7 Excuse from Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) 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
- (c) 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.

16. EVENTS OF DEFAULT

16.1 Any one of the following shall be deemed to be a "**Licencee Event of Default**" unless the default has occurred as a result of a Force Majeure Event:

- 16.1.1 Breach of any of the terms of the Tender Document and the Integrity Pact (executed copy of which is annexed as **Schedule 7**) by the Licencee;
- 16.1.2 Failure on the part of the Licencee to make payment of Licence Fees or other charges payable to the Licensor within ten (10) days from the date it is due and payable;
- 16.1.3 Breach of any of the covenants or representations and warranties by the Licencee, which if capable of being cured are not cured within a period of thirty (30) days from the date of such breach;
- 16.1.4 Misrepresentation by the Licencee, either under this Agreement or under any other Definitive Document or the Tender Document, is made or uncovered;
- 16.1.5 If the Licencee does not provide to the Licensor, within the time specified under this Agreement, any information required to be provided by it to the Licensor or sought by the Licensor;
- 16.1.6 If any act or omission of the Licencee results in violation of or non-compliance with the New Delhi Municipal Council Act, 1994, the Master Plan, this Agreement, other Definitive Documents, or the Tender Document, or any other document referred therein or issued pursuant thereto or any Applicable Law;
- 16.1.7 If it comes to the notice of the Licensor that the Licencee has given an incorrect/ inaccurate/ misleading information or has made any misrepresentation, or suppressed any material information/ facts;

- 16.1.8 If it comes to the notice of the Licensor that the Licencee is, or was, at the time of submission of its Bid, in breach of Clause 12, or has been black-listed by the Licensor or other Government Authority in the past three (3) years;
- 16.1.9 Any execution or distress is enforced or levied on any or all assets and/or property of the Licencee and any order relating thereto is not discharged or stayed within a period of thirty (30) days from the date of the enforcement/levy.
- 16.1.10 If an attachment or restraint has been levied on the assets and/or property of the Licencee and such attachment or restraint has not been discharged or stayed within a period of thirty (30) days of the date of such attachment or restraint.
- 16.1.11 Any Government Authority shall have condemned, acquired, nationalised, appropriated, confiscated, seized, assumed custody or control of or otherwise expropriated all or any property of the Licencee or shall have assumed custody or control of the Licencee or shall have taken any action for the dissolution of the Licencee.
- 16.1.12 If it takes any step to initiate a voluntary proceeding under any applicable bankruptcy, insolvency, winding up or other similar law (including those relating to sick companies) now or hereafter in effect, or consents to the entry of an order for relief in an involuntary proceeding under any such law, or consents to the appointment or taking occupation by a trustee, receiver, liquidator, administrator, manager, assignee (or similar official) for any part of its assets or property;
- 16.1.13 If an involuntary proceeding against it has been commenced under any applicable bankruptcy, insolvency, winding up or other similar law (including those relating to sick companies) now or hereafter in effect, or in any case, proceeding or other action for the appointment of a trustee, receiver, liquidator, assignee (or similar official) for any part of its assets and/or property or for the winding up or liquidation of its affairs, or other action has been presented to a court or other Government Authority, and such appointment/action is not stayed, quashed or dismissed within a period of thirty (30) days from the date of its admission;
- 16.1.14 It has taken or suffered to be taken any action towards its reconstruction, reorganisation, liquidation or dissolution;
- 16.1.15 It is unable to pay its debts or presumed or deemed unable to pay its debts or takes any steps or suffers any actions in relation to protection or relief of debtors, arrangement with creditors, or moratorium / suspension of payments to creditors or any equivalent or analogous proceedings or actions;
- 16.1.16 Performance Security provided by the Licencee has lapsed or has been appropriated or encashed by the Licensor and the Licencee has failed to replenish the same in accordance with the terms of this Agreement;
- 16.1.17 Licencee has failed to deposit the Upfront Fee in terms of this Agreement and/or the Tender Documents; or
- 16.1.18 If a Subsidiary's experience, Turnover and Net Worth was used to meet the

Eligibility Criteria under the Tender Document, and the Subsidiary ceases to continue to remain a Subsidiary of the Licencee at any point of time before the seventh (7th) anniversary of the Effective Date; or,

- 16.1.19 Licencee ceases to carry on its business, including the business of operating and managing the Licensed Premises, for a continuous period of fifteen (15) days or more, without obtaining the prior written permission from the Licensor.
- 16.1.20 {Licencee terminates the Management Agreement any time prior to the expiry of 10 (ten) years from the Effective Date without the prior written consent of the Licensor.}⁵
- 16.1.21 {The Licencee commits a breach of Clause 8.1.1 (iii)/ Clause 8.1.1 (iv)}⁶

16.2 Consequences of a Licencee Event of Default:

- 16.2.1 On the occurrence of a Licencee Event of Default, Licensor may give a notice in writing to the Licencee for remedying the breach and if the Licencee fails to do so within a period of thirty (30) days from the date of such notice, the Licensor may terminate the Licence without giving any further notice. This shall be without prejudice to such other rights the Licensor shall have under the Tender Document or other Definitive Documents or Applicable Laws;
- 16.2.2 In addition to the right to terminate the Agreement and other rights and remedies available under Applicable Law or under this Agreement, upon occurrence of a Licencee Event of Default, the Licensor shall be entitled to;
- i. adjust and appropriate the Upfront Fee against any unpaid Licence Fee and accrued interest thereon;
 - ii. recover any unpaid Licence Fee and accrued interest thereon and all other amounts due and payable by the Licencee under this Agreement but remaining unpaid, including by way of encashing/ appropriating the Performance Security against such unpaid amounts;
 - iii. disconnect electricity connection;
 - iv. disconnect water supply connection;
 - v. seal the Licensed Premises; and
 - vi. the Licensor may also recover the balance outstanding dues, if such dues exceed the amount of Performance Security, from the other contracts of Licencee with the Licensor or, set off any other amounts payable by the Licensor to the Licencee in any other capacity.

Termination of the Agreement due to Licencee Event of Default shall inter alia

⁵ Applicable only in the event that the Licencee had partnered with a Hotel Brand Owner during the Bidding Process for meeting the eligibility criteria under the Tender Document.

⁶ The exact clause applicability will depend if the Successful Bidder has participated either as a “standalone entity”/ “together with one (1) subsidiary” or had participated by “partnering with one (1) Hotel Brand Owner” Accordingly, only the appropriate clause reference will be retained at the time of execution.

have the following consequences:

- 16.2.3 Disqualification of the Licencee from bidding for any auction or allotment conducted by the Licensor for a period of five (5) years starting from the date of occurrence of such Licencee Event of Default. This shall be without prejudice to such other rights the Licensor shall have under the Tender Document or other Definitive Documents or other law of otherwise;
- 16.2.4 All permissions granted by the Licencee to any Person to use or occupy any part of the Licensed Premises in accordance with the terms of this Agreement shall be deemed to have been withdrawn and revoked with immediate effect and the Licencee shall ensure that all such Persons shall immediately vacate the Licensed Premises; and
- 16.2.5 In addition to the right to recover unpaid Licence Fee and other unpaid amounts in accordance with this Agreement, the Licensor shall be entitled to levy and recover from the Licencee liquidated damages in an amount equal to the applicable Minimum Guarantee Fee for twelve (12) months' period ("**Liquidated Damages**") and such Liquidated Damages may be recovered in any manner permitted under Applicable Law including by encashment or appropriation of any balance Performance Security available with the Licensor. The Licencee confirms that the amount stipulated as Liquidated Damages herein is a genuine pre-estimate of loss and damage likely to be suffered by the Licensor due to a Licencee Event of Default and the Licencee waives any right to contest the reasonableness of Liquidated Damages specified herein.

17. TERMINATION

- 17.1 The Agreement shall stand terminated on the expiry of the Licence Period or on early termination in accordance with the terms of this Agreement.
- 17.2 The Licencee shall not be entitled to surrender or otherwise terminate the Licence granted hereunder prior to expiry of the Licence Period. If the Licencee cancels, surrenders or otherwise terminates the Licence granted hereunder prior to expiry of the Licence Period, the Licencee shall be liable to pay the Liquidated Damages and the Licensor shall be entitled to recover the Liquidated Damages in any manner permitted by Applicable Law including by encashment/appropriation of Performance Security.
- 17.3 The Licensor shall have the right to terminate the Licence granted hereunder and this Agreement:
- 17.3.1 Upon occurrence of a Licencee Event of Default; and/or
- 17.3.2 If required of it under any Applicable Law or by any order of a court or tribunal.
- 17.4 It is hereby clarified that by the Licensor accepting payment of any Licence Fees or other charges owed hereunder by the Licencee after its Due Date, the Licensor shall not be deemed to have waived any of its rights against the Licencee, either to require prompt payment of such amounts when due or to declare a Licencee Event of Default

for failure to make such prompt payment(s). Notwithstanding any delay or omission, following any one or more of the aforementioned Events of Default, the Licensor or the Licensor Representatives may re-enter the Licensed Premises or any part thereof and repossess the same without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be available to the Licensor on account of nonpayment of Licence Fees or breach of a covenant. Each right of the Licensor provided for in this Agreement shall be cumulative and shall be in addition to every other right provided for in this Agreement or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise or beginning of the exercise by the Licensor of any one or more of such rights shall not preclude the simultaneous or later exercise by the Licensor of any or all other rights provided for by this Agreement or now or hereafter existing at law or in equity, by statute or otherwise. Nothing herein contained shall be construed as limiting or precluding the recovery by the Licensor against the Licensee of any sums or damages to which in addition to the damages particularly provided herein, the Licensor may lawfully be entitled by reason of any default hereunder on the part of the Licensee.

18. HANDING OVER OCCUPATION; CONSEQUENCES OF EXPIRY OR TERMINATION OF THE LICENCE

18.1 Simultaneously with the expiry of the Licence Period or on early termination of the Licence under the provisions of this Agreement:

18.1.1 The Licensee shall pay all arrears, if any, of all unpaid Licence Fees and other payments and charges payable by the Licensee hereunder;

18.1.2 The Licensee shall, and shall ensure that each of the sub-licensee, vacates the Licensed Premises within a period of thirty (30) days from the date of expiry of the Licence Period or termination of Licence, whichever is earlier and remove all its movable articles, belongings, and things from the Licensed Premises and shall ensure that its officers, employees and agents remove themselves and their articles, belongings and things from the Licensed Premises and the Licensee shall hand over to the Licensor, (i) actual, vacant, and peaceful occupation of the Licensed Premises in working condition (reasonable wear and tear excepted) and modifications made in accordance with the terms of this Agreement. The Licensee shall not remove any of the Licensor's Fixtures or permanent fittings and Fixtures, removal of which may cause damage to the Licensed Premises, unless otherwise specifically required by the Licensor. In case of any damage to the Licensed Premises or to any permanent fixture or fitting therein, the Licensee shall be obliged, at its cost, to repair any such damage and restore the Licensed Premises to a good and tenantable state, failing which the Licensor shall be entitled to deduct amounts incurred by it towards such repairs/ restoring such damage from the Performance Security provided by the Licensee to the Licensor. The Licensor shall issue an Occupation Takeover Letter to the Licensee on the date the Licensor resumes or takes over exclusive possession and occupation of the Licensed Premises.

18.1.3 In the event, for any reason whatsoever, the Licensee fails to or refuses to or delays in vacating the Licensed Premises within the time period set out in Clause 18.1.2 above, then without prejudice to such rights, the Licensor has under this Agreement or under Applicable Law or otherwise including the right to forfeit the entire Performance

Security and the Upfront Fee, the Licencee shall be obligated to pay to the Licensor in advance, on a weekly basis, (i) five times of the last paid Licence Fee for such period for which it overstays at the Licensed Premises, which will increase at the rate of 15% (fifteen per cent) per annum on compounding basis; (ii) pay all other charges due and payable to the Licensor for the Licensed Premises; and (iii) pay such damages to the Licensor at such rates as may be determined by the Licensor at that point in time.

- 18.1.4 Subject to the Licencee having handed over actual vacant occupation of the Licensed Premises and the Licensor having issued the Occupation Takeover Letter to the Licencee upon expiry or early termination of the Licence Period and the Licencee having paid and discharged all its payment obligations to the Licensor in full (including without limitation all unpaid Licence Fee and accrued interest thereon and all other amounts due and payable, including the Liquidated Damages specified in Clause 16.2.5) under this Agreement, the Licensor shall return:
- (a) the balance Performance Security, if any; and,
 - (b) any excess amounts that have been already paid by the Licencee to the Licensor, in each case, to the Licencee within a period of one (1) month from the date of discharge by the Licensee of the aforesaid payment obligations to the Licensor.

19. BARE LICENCE

- 19.1 This Agreement constitutes a bare Licence granted by the Licensor to the Licencee to use and occupy the Licensed Premises and nothing contained herein constitutes or creates or shall be construed to create or be deemed to constitute or create any easement, tenancy, sub-tenancy or any other similar right, title, interest or entitlement in, to and upon the Licensed Premises in favour of the Licencee or as transferring any interest therein in favour of the Licencee other than the permissive right of use hereby granted. Nothing contained in this Agreement shall constitute a transfer or conveyance or letting of the Licensed Premises to the Licencee. During the Licence Period, the Licencee shall not create or attempt to create any Encumbrance, sub-licence or third party rights, except to the limited extent permitted in this Agreement, or induce any third party to part with occupation or use of the Licensed Premises in any manner whatsoever. The Licence hereby granted to the Licencee is a non-assignable, non-transferable Licence granted for the limited purpose set out in this Agreement.
- 19.2 The Parties expressly agree and acknowledge that this Agreement constitutes only a Licence of the Licensed Premises and does not constitute or gives rise to or be construed as a lease, development agreement, and does not give rise to any relationship (including joint venture, collaboration and/or agency) other than that of Licensor and Licencee. Should any clause of, or part of any clause within, this Agreement be interpreted or construed otherwise for any reason by any Court of law of competent jurisdiction, such clause/ provision shall be modified to restore the relationship of a licensor and Licencee and aligning it with the intent of the Parties as set out in this Clause.
- 19.3 The Licencee hereby agrees and acknowledge that this Agreement does not confer in any manner whatsoever, any right or interest in the land, property and/or building in or at the Licensed Premises.

20. GOVERNING LAW

20.1 The Licensed Premises is a public premise as defined under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, as amended from time to time.

20.2 This Agreement shall be governed in accordance with the laws of India. Subject to Clause 20.3, courts at Delhi having competent jurisdiction alone shall have the exclusive jurisdiction to entertain any application or suit in connection with this Agreement.

20.3 Amicable Resolution

20.3.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause 20.3.2 below.

20.3.2 Either Party may require such Dispute to be referred to the Chairman of the Licensor and the Person duly authorised by the Board of Directors of the Licencee, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any case within thirty (30) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within thirty (30) days of such meeting or such longer period as may be mutually agreed by the Parties.

21. NOTICES

21.1 Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and signed by or on behalf of the Party giving it. Such notice shall be served by delivering it by hand, mail (physical or electronic) or courier to the address set forth below. In each case it shall be marked for the attention of the relevant Party set forth below. Any notice so served shall be deemed to have been duly received (a) when delivery is made by hand, when hand delivered to the other Party; or (b) when sent by physical mail, where ten (10) days have elapsed after deposit in the mail with certified mail receipt requested postage prepaid; or (c) when sent by courier on the fifth day after deposit with an overnight delivery service, postage prepaid, with next day delivery guaranteed, provided that the Party sending it receives a confirmation of delivery from the delivery service provider; or (d) when sent by electronic mail notification with return receipt requested, upon the obtaining of a valid return receipt from the recipient.

To the Licensor:

Attention : Director (Estate –I), New Delhi Municipal Council
Address : 3rd Floor, Palika Kendra, Parliament Street, New Delhi - 110001
Telephone : +91 11 2374 2532
Email : director.estate@ndmc.gov.in

To the Licencee:

Attention : [insert name and designation of Licencee representative]
Address : [insert address of Licencee representative]
Telephone : [insert telephone no. of Licencee representative]
Email : [insert email id of Licencee representative]

22. AUTHORITY OF PARTIES

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

23. COUNTERPARTS

This Agreement shall be executed in two counterparts. The Licensor shall retain the registered counterpart which bears the full stamp duty and the Licencee shall retain the other counterpart. Each counterpart shall constitute an original and both counterparts shall together constitute one and the same document.

24. STAMP DUTY AND REGISTRATION CHARGES

24.1 One counterpart of this Agreement shall be lodged for registration by the Licensor and the Parties shall admit execution thereof. All stamp duty and registration charges and related fees, costs, charges and expenses in respect of this Agreement and/or any other document pertaining to the Licence or any other charges by whatever name called and to whomsoever payable in connection with or otherwise relating to the grant of the Licence, shall be borne and paid by the Licencee.

25. LEGAL COSTS

Each Party shall bear and pay its respective legal costs in respect of this Agreement and matters arising therefrom or connected therewith.

26. OVERRIDING EFFECT

This Agreement constitutes and represents the entire Agreement between the Parties hereto on the subject matter hereof and supersedes all prior arrangements, agreements and understandings, whether oral or written on the subject hereof.

27. SEVERABILITY

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

28. VARIATION

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

29. WAIVER

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

30. WAIVER OF IMMUNITY

The Licencee unconditionally and irrevocably agree that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or other Definitive Documents or the Tender Document or any transaction contemplated thereunder or pursuant thereto, then no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Licencee with respect to its assets.

31. SURVIVAL

The expiration or termination of this Agreement shall not operate to waive, release or otherwise relieve any Party of any liability that has accrued prior to such termination or expiration. Notwithstanding anything to the contrary, the provisions of this Agreement relating to notices, governing law, handover of vacant occupation of Licensed Premises to the Licensor, payment of unpaid Licence Fee, other outstanding and Liquidated Damages and any other covenants and obligations which by their nature are intended to survive, shall survive the termination or expiry of this Agreement.

32. FURTHER ASSURANCES

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

33. NAMING OF THE LICENSED PREMISES

The Licensed Premises shall be named by the Licencee in consultation with the Licensor

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

New Delhi Municipal Council

WITNESSED BY:

By: _____

Name: _____

Name: _____

Address: _____

Title: _____

[●]
(Licencee)

WITNESSED BY:

By: _____

Name: _____

Name: _____

Address: _____

Title: _____

SCHEDULE 1 - DETAILS OF LICENSED PREMISES*(to be suitable updated during handover of the property)*

1. The Property is located on Plot No. 1, Man Singh Road, New Delhi – 110011. The Property is well connected to the nearest airport, railway station and bus terminus. Motilal Nehru Marg runs along the south western side of the plot while the Man Singh Road lies on the East.
2. A building exists on the plot, construction of which was completed around 1978. The building is a Reinforced Cement Concrete (RCC) structure and consists of thirteen floors, two roof top restaurant areas and two basement levels and one mezzanine area.
3. The plot area is 3.78 acres. The building has a total built up area of 2,45,884.79 square feet including the terrace and basement. Floor wise breakup of built-up area is provided in the table below along with the floor wise usage:

Description	Value (square feet)
Built-up area of lower basement	27,861.00
Built-up area of upper basement	49,692.50
Built-up area of ground floor	34,312.50
Built-up area of entrance lobby floor	31,491.69
Built-up area of mezzanine above entrance lobby floor	10,473.65
Built-up area of 1st floor	13,606.15
Built-up area of 2 nd floor	13,606.15
Built-up area of 3 rd floor	13,606.15
Built-up area of 4 th floor	13,606.15
Built-up area of 5 th floor	13,606.15
Built-up area of 6 th floor	13,606.15
Built-up area of 7 th floor	13,606.15
Built-up area of 8 th floor	13,606.15
Built-up area of 9 th floor	13,606.15
Built-up area of 10 th floor	13,606.15
Built-up area of 11 th floor	13,606.15
Built-up area of lower level roof top restaurant floor	14,044.90
Built-up area of upper level roof top restaurant floor including additional area of loft	5,894.40
Built-up Area	2,45,884.79

4. Other details of the property are as below:

Description	Value
Rooms	The present licensee is operating 292 rooms
Bars, banquets and restaurants	The present licensee is operating 7 F&B outlets and six meeting rooms with flexible capacity.
Pool and Spa	Yes
Parking	Open parking space

SCHEDULE 2 - OCCUPATION LETTER

Date:

To,

The Director (Estate – I)

New Delhi Municipal Council

Palika Kendra

Parliament Street

New Delhi – 110 001

Kind Attention: [insert name]

Subject: Occupation Letter for the Licensed Premises at Plot No. 1, Man Singh Road, New Delhi - 110011

Dear Sir / Madam,

With reference to the Licence Agreement dated [insert date], we, the Licencee declare and record as follows:

1. That the occupation of Licensed Premises is taken over by us, the Licencee on [insert date] which is the Effective Date, on an “**As Is Where Is Basis**” and as per the terms of the Licence Agreement;
2. That the Licencee has inspected the Licensed Premises and is satisfied with the same in all respects;
3. That the keys to all locks placed/installed at the Licensed Premises have been taken over by the authorised representative [insert name] of the Licencee;
4. That the Licensor and Licencee have taken joint meter readings as follows:
 - (i) Electricity:
 - (ii) Water:
 - (iii) Piped gas:
5. That from the date written hereinabove, the Licencee has been taken and has accepted complete occupation of the Licensed Premises for the purposes set out in the Licence Agreement and undertakes to fully comply with the terms and conditions of the Licence Agreement during the Licence Period.
6. That from the date written hereinabove, the Licencee is solely responsible for the safety and security of the Licensed Premises.
7. Capitalised terms not defined herein shall have the meanings assigned to them in the Licence Agreement.

Yours truly,

Authorised signatory
[name and details of Licencee]

Accepted By:

Authorised signatory
(New Delhi Municipal Council)

SCHEDULE 3 - OCCUPATION TAKEOVER LETTER

Date:

To,

[insert name and address of the Licencee]

Subject: Takeover of Physical Occupation of the Licensed Premises at Plot No. 1, Man Singh Road, New Delhi - 110011

Dear Sir / Madam,

With reference to the Licence Agreement dated [insert date], we, New Delhi Municipal Council (as the Licensor) declare and record as follows:

1. That the License Agreement [was terminated on [insert date] vide notice dated [insert date]/ expired on [insert date] (delete whichever is not applicable).
2. That within thirty (30) days from the date of [termination/ expiry] (delete whichever is not applicable), the erstwhile Licencee (being [insert name of erstwhile Licencee]) is obligated to handover the vacant and peaceful occupation of the Licensed Premises to NDMC.
3. Accordingly, with effect from [insert date] NDMC has taken over/resumed the exclusive physical occupation of the Licensed Premises to the exclusion of all Person including the erstwhile Licencee (being [insert name of erstwhile Licencee]);
4. That the erstwhile Licencee (being [insert name of erstwhile Licencee]) [has paid all dues / undertakes to pay] [the outstanding/unpaid amount of insert amount] (delete whichever is not applicable) to NDMC as per the terms of the License Agreement failing which NDMC shall be entitled to proceed in accordance with the Agreement or, as per Applicable Law;
5. That the keys to all locks placed/installed at the Licensed Premises have been handed over to the authorised representative [insert name] of the Licensor;
6. That the Licensor and Licencee have taken joint meter readings as follows:
 - (iv) Electricity:
 - (v) Water:
 - (vi) Piped gas:
7. That the Licensor has liberty to break open the locks for which keys have not been handed over by the Licencee;
8. That with effect from [insert date], the Licensor shall not be responsible for any goods, belongings or Fixtures of the Licencee left within the Licensed Premises and the Licencee confirms that it has no outstanding claims or dues payable from the Licensor.
9. Capitalised terms not defined herein shall have the meanings assigned to them in the

Licence Agreement.

Yours truly,

Authorised Signatory
(New Delhi Municipal Council)

Accepted By:

Authorised Signatory
[insert name of the licensee]

SCHEDULE 4 - FORMAT OF PERFORMANCE SECURITY

B.G. No.

Dated:

1. In consideration of you, New Delhi Municipal Council, having its office at Palika Kendra Building, Opposite Jantar Mantar, Parliament Street, New Delhi - 110001 (hereinafter referred to as the “NDMC”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having entered into a Leave and Licence Agreement with [insert name of Licencee] (a company registered or existing under the Companies Act, 1956/ 2013) and having its registered office at [insert address of registered office of Licencee] (hereinafter referred to as the “**Licencee**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the running of the property located on Plot No 1, Man Singh Road, New Delhi 110011 pursuant to the Leave and Licence Agreement dated [insert licence execution date] executed in respect of the building, we (name of the bank) having our registered office at [insert address of registered office of the Bank] and one of its branches at [insert address of relevant branch of the Bank] (hereinafter referred to as the “**Bank**”), at the request of the Licencee, do hereby in terms of Clause 4.4.2 of the Leave and Licence Agreement, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Leave and Licence Agreement by the said Licencee and unconditionally and irrevocably undertake to pay forthwith to the NDMC an amount of Rs. [insert amount in figures] (Rupees [insert amount in words] only) (hereinafter referred to as the “**Guarantee**”) without any demur, reservation, recourse, contest or protest and without reference to the Licencee if the Licencee shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Definitive Documents.
2. A written demand made by the NDMC stating that the Licencee is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Definitive Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Licencee or any other person and irrespective of whether the claim of the NDMC is disputed by the Licencee or not, merely on the first written demand in the prescribed format below from the NDMC stating that the amount claimed is due to the NDMC by reason of failure of the Licencee to fulfil and comply with the terms and conditions contained in the Definitive Documents. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [insert amount in figures] (Rupees [insert amount in words] only)
4. This Guarantee shall be irrevocable and remain in full force for a period of three (3) years, i.e., until [insert date falling three years after the issue date] (the

“**Expiry Date**”) and shall continue to be enforceable till all amounts claimed under this Guarantee have been paid.

5. We, the Bank, further agree that the NDMC shall be the sole judge to decide as to whether the Licencee is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Definitive Documents, and the decision of the NDMC that the Licencee is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the NDMC and the Licencee or any dispute pending before any Court, Tribunal, Arbitrator or any other NDMC.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Licencee or the Bank or any absorption, merger or amalgamation of the Licencee or the Bank with any other person.
7. In order to give full effect to this Guarantee, the NDMC shall be entitled to treat the Bank as the principal debtor. The NDMC shall have the full liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Definitive Documents or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Definitive Documents or the securities available to the NDMC, and the Bank shall not be released from its liability under these presents by any exercise by the NDMC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Licencee or any other forbearance, act or omission on the part of the NDMC or any indulgence by the NDMC to the said Licencee or by any change in the constitution of the NDMC or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier, registered post AD or, by hand delivery to the Bank at the address set forth herein.
9. We undertake to make the payment immediately upon receipt of your notice of claim on us addressed to [insert name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the NDMC to proceed against the said Licencee before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the NDMC may have obtained from the said Licencee or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the NDMC in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. [insert amount in figures] (Rupees [insert amount in words] only). The Bank shall be liable to pay the said amount or any part thereof only if the NDMC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before 5.00 pm Indian Standard Time on the Expiry Date.

Signed and Delivered by [insert name of the Bank]

By the hand of Mr./Ms. [insert name], its [insert designation] and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

FORMAT OF DEMAND LETTER

[On letterhead of NDMC]

To,
[Details of the Branch]
Attn: [Designation of person]

Sub: Bank Guarantee No. [insert bank guarantee number] dated [insert date]

Dear Sir/Ma'am,

This is with reference to aforementioned bank guarantee issued by you on behalf of [insert name of Licencee] (the **Licencee**). The Licencee is in default of the terms and conditions of the [Licence Agreement, Tender Document and/or other Definitive Documents].

We hereby invoke the bank guarantee and direct you to forthwith pay the amounts to us as per details below:

[Details of amount (if partial) and bank account details of NDMC]

Your faithfully,
For and on Behalf of **New Delhi Municipal Council**

Name:
Date:

SCHEDULE 5 - FORMAT OF REPORTING LICENCE FEE

(to be provided on the Licencee's letter head and signed by the Authorized Signatory)

Description	Formula	Value
Financial Year	Not Applicable	
Gross Revenue (Rs.)	A	
No. of months of operations in the Financial Year	B	
Monthly Gross Revenue (Rs.)	$C = A / B$	
Revenue Share Payable (in percentage terms)	D	
Revenue Share Payable monthly (in Rs.)	$E = C \times D$	

<i>(All figures in Rs.)</i>				
Sl. No.	Month	Minimum Guarantee Fee <i>(payable monthly)</i>	Revenue Share payable monthly (E)	Monthly Licence Fee payable = Higher of Minimum Guarantee Fee or Revenue Share payable monthly
1	April			
2	May			
3	June			
4	July			
5	August			
6	September			
7	October			
8	November			
9	December			
10	January			
11	February			
12	March			

SCHEDULE 6 - FORMAT OF RECONCILIATION STATEMENT

(to be provided on the Licencee's letter head and signed by the Authorized Signatory)

Reconciliation Statement of Licencee Fee

Description	Formula	Value
Start Date of Measurement Period	Not Applicable	
End Date of Measurement Period	Not Applicable	
Total Revenue from the Licensed Premises as per half yearly account statement/ audited accounts	A	
<i>Less: All statutory applicable taxes paid (to be supported by payment proofs)</i>	B	
<i>Less: Revenue from any sale of assets</i>	C	
<i>Less: Interest income from investments</i>	D	
Gross Revenue (Rs.)	$E = A - B - C - D$	
No. of months of operations in the Financial Year	F	
Monthly Gross Revenue (Rs.)	$G = E / F$	
Revenue Share Payable (in percentage terms)	H	
Revenue Share Payable monthly (in Rs.)	$I = G \times H$	

Sl. No.	Month	Revised Minimum Guarantee Fee Payable(Rs.) [J]	Actual Revenue Share Payable (Rs.) [L]	Actual Licence Fee Payable (Rs.) [M = Higher of J or K]	Actual Payments Made (Rs.) [N]	Excess Payment Made/ Payment Shortfall Rs. [O = N-M]
1						
2						
3						
4						
5						
6						
Totals						

Enclosures:

1. Half yearly financial statements or audited annual accounts (as the case may be)
2. Payment proofs for all taxes paid, deductions of which have been claimed while calculating Gross Revenue
3. Proof of annual rate of inflation (based on Wholesale Price Index for 'All Commodities') as published by Government of India and detailed calculations for the revision of the Minimum Guarantee Fee and the copy of the revised Schedule 5 as submitted to NDMC.

SCHEDULE 7 – EXECUTED COPY OF INTEGRITY PACT
(to be attached prior to execution of the Leave and Licence Agreement)

{SCHEDULE 8 – EXECUTED COPY OF THE MANAGEMENT AGREEMENT}
(to be attached prior to execution of the Leave and Licence Agreement, if applicable)