

SHARE HOLDERS AGREEMENT

Among  
THE GOVERNOR OF UTTAR PRADESH  
And  
(NAME OF THE COMPANY)  
AND  
(NAME OF THE INVESTOR)  
AND  
(NAME OF THE LEAD MEMBER )  
AND (NAME OF THE CONSORTIUM MEMBER 1)  
AND  
(NAME OF THE CONSORTIUM MEMBER 2)  
AND  
(NAME OF THE CONSORTIUM MEMBER 3)  
(As may be Applicable in case of Investor)

**SHAREHOLDERS AGREEMENT**

THIS SHAREHOLDERS AGREEMENT is made and entered into on this \_\_\_ day of \_\_\_  
2009

BY AND AMONG

(1) THE GOVERNOR OF UTTAR PRADESH, acting through and represented by the Principal Secretary, Department of Tourism, Government of Uttar Pradesh (hereafter referred to as the "**Government**" which expression shall include its successors in office)

AND

(2) \_\_\_\_\_, a company duly incorporated and existing under the provisions of the (Indian) Companies Act, 1956, with its registered office at \_\_\_\_\_ (the "**Investor**" which expression shall include its Associates and successors), in case of sole Applicant;

OR

(2) \_\_\_\_\_, a company duly incorporated and existing under the provisions of the (Indian) Companies Act, 1956, with its registered office at \_\_\_\_\_ (the "**Investor/Lead Member**" which expression shall include its Associates and successors);

AND

(3) \_\_\_\_\_, a company duly incorporated and existing under the laws of \_\_\_\_\_, with its registered office at \_\_\_\_\_ (hereinafter referred to as “**Consortium Member 1**” which expression shall include its Associates and successors);

AND

(4) \_\_\_\_\_, a company duly incorporated and existing under the laws of \_\_\_\_\_, with its registered office at \_\_\_\_\_ (hereinafter referred to as “**Consortium Member 2**” which expression shall include its Associates and successors);

AND

(5) \_\_\_\_\_, a company duly incorporated and existing under the laws of \_\_\_\_\_, with its registered office at \_\_\_\_\_ (hereinafter referred to as “**Consortium Member 3**” which expression shall include its Associates and successors);

*Lead Member, Consortium Member 1, Consortium Member 2 & Consortium Member 3 are hereinafter collectively referred to as “Investor/Consortium Members” and “Consortium Member” means any one of them), in case of Consortium;*

AND

(6) \_\_\_\_\_, a company duly incorporated and existing under the provisions of the (Indian) Companies Act, 1956, with its registered office at \_\_\_\_\_ (hereinafter referred to as “**Company/SPV**”, which expression shall include its Associates and successors).

WHEREAS

- A. The Company is principally engaged in the business of Hospitality/Tourism Services (“**Business**”).
- B. Government is the beneficial and legal owner of almost 100% of the issued, subscribed and paid up equity share capital of the Company as on date of this Agreement (“**Equity Share Capital/Share Capital**”).
- C. The Investor, (alongwith each of the Consortium Member, in case of Consortium), the Company, and the Government are parties to an agreement of even date i.e. the Share Sale Agreement whereby Government, has subject to the terms and conditions stated therein, agreed to sell to the Investor, and the Investor has agreed to purchase from Government 76% Equity Share Capital of the Company (“**Transaction Shares**”).
- D. The Parties have entered into this Agreement to record their agreement as to the manner in which the Company's affairs shall be conducted after the Investor acquires the Transaction Shares from Government and to identify and determine certain rights and obligations with respect to the ownership, directly and indirectly, of the Equity Shares (defined hereinafter).

- E. The Company has agreed to give the representations and warranties set out in and enter into this Agreement in consideration of the benefits it has determined it will receive from the sale of the Transaction Shares which include the creation of a significant awareness of, and interest in, the Company and development of its Business.
- F. The Parties have agreed that all Employees (defined hereinafter) of the Company on the date hereof will continue in the employment of the Company on their existing service conditions. The Investor recognizes that Government, in relation to its employment policies, follows certain principles for the benefit of the members of the Schedule Caste, Schedule Tribes, physically handicapped persons and other socially disadvantaged categories of the society. The Investor shall comply with the Government policy in this regard.

NOW THEREFORE, in consideration of the premises and the covenants and mutual agreements contained in this Agreement (the receipt and adequacy of which are hereby mutually acknowledged), each of the Parties hereby agrees as follows:

**ARTICLE 1  
DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**1.1 Definitions**

In addition to the terms defined in the introduction to and the text of this Agreement, wherever used in this Agreement, the following words and terms shall have the meaning set out below:

“Acceptance Notice” shall have the meaning ascribed to such term in Article 5.3 (d) hereof;

"Act" means the (Indian) Companies Act, 1956 including any amendment thereto from time to time;

“**Associates**” means in relation to the Investor/ Consortium Member, a person who controls or is controlled by or is under common control with such Investor/ Consortium Member. For this purpose “Control” means with respect to an entity which is a company or corporation, the ownership directly or indirectly of more than 50% (Fifty percent) of the voting rights of such entity.

"Agreement" means this Shareholders Agreement, its Recitals and all attached schedules, exhibits and all instruments supplemental to or in amendment or confirmation of this Agreement entered into by the Parties in writing;

"Arbitration Act" means the (Indian) Arbitration and Conciliation Act, 1996, as now enacted and the Rules thereunder or as the same may be amended, re-enacted or replaced from time to time;

“Articles of Association” means the articles of association of the Company;

“Assets” means all plant, machinery, equipment, buildings, land and other real estate property whether owned by the Company or in which the Company has any interest.

"Board" means the board of directors of the Company;

"Business Day" means a day, on which the commercial banks located at Lucknow are open for business during normal banking hours but excluding a Saturday, Sunday, a gazetted public holiday and any other day that is declared as a holiday by the Government of India or the Government of Uttar Pradesh as per Negotiable instruments Act or any other relevant enactment;

"Closing" shall have the meaning ascribed to such term in the Share Sale Agreement;

"Closing Date" shall have the meaning ascribed to such term in the Share Sale Agreement;

“Confidential Information” shall have the meaning ascribed to such term in Article 7.2 (a) hereof;

"Consortium Member" shall have the meaning ascribed to such term in the preamble of this Agreement and refers to Person or Persons who directly or indirectly control(s) the Investor;

"Employee" shall mean persons who are on the rolls of the Company on the Closing Date and shall include workmen, managers and supervisors but shall exclude the directors of the Company prior to the Closing Date.

"Equity Share(s)" means the voting equity share(s) of the Company, which have been issued or may be issued from time to time in accordance with its Articles and Memorandum of Association of the Company and the Act;

"Financial Year" means, except as otherwise agreed by the Board in accordance with this Agreement, the financial year consisting of a period of 12 consecutive months commencing on 1st April of each calendar year and ending on 31st day of March of the immediately following calendar year.

"Funding Notice" shall have the meaning ascribed to such term in Article 3.2 (a) hereof;

"Funding Period" shall have the meaning ascribed to such term in Article 3.2 (a) hereof;

**"Hospitality/Tourism Services"** include service activities pertaining to development, operation, maintenance of hotels, motels, guest houses, tourist bungalows, resorts, bar & restaurants or such businesses that provide transitional or short term lodging/fooding and leisure services and/ or facilities,tourism that may be based on the cultural, historic, and social attractions of a place or on the appeal of a different environment, and tours and ancillary services for tourists, development of package holidays, health resorts, medical tourism, Convention/ Banquet Halls."

"Managing Director" means the managing director of the Company, as may be appointed from time to time;

"Offer" shall have the meaning ascribed to such term in Article 5.3 (a) hereof;

"Offeror" shall have the meaning ascribed to such term in Article 5.3 (a) hereof;

"Offer Price" shall have the meaning ascribed to such term in Article 5.3 (b) hereof;

"Offer Period" shall have the meaning ascribed to such term in Article 5.3 (d) hereof;

"Offer Shares" shall have the meaning ascribed to such term in Article 5.3 (b) hereof;

"Other Shareholder" shall have the meaning ascribed to such term in Article 5.3 (a) hereof;

"Offer to Purchase" shall have the meaning ascribed to such term in Article 5.3(c) hereof;

"Offer to Sell" shall have the meaning ascribed to such term in Article 5.3(a) hereof;

"Parties" means collectively, the Government, the Investor/ the Investor and the Consortium Member(s), the Company and any other Person who becomes a party to this Agreement and "Party" means any one of them;

"Person" includes any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organisation, trust, body corporate and a natural person in his capacity as trustee, executor, administrator or other legal representative;

"Request for Proposal" means the request for proposal dated 28.01.2009 issued in connection with the sale of the Transaction Shares by the Government;

"Right" shall have the meaning ascribed to such term in Article 3.2 (c) hereof;

"Sale Notice" shall have the meaning ascribed to such term in Article 5.3 (a) hereof;

"Shareholders" means Government and the Investor and such other Person(s) who may become bound by the terms of this Agreement for acquiring the Equity Shares in terms of and as permitted under this Agreement (but shall not include the Employees), collectively, and "Shareholder" means any one of such parties individually;

"Share Sale Agreement" shall mean the share sale agreement which shall be entered into between GoUP, the Investor, and Company for the sale of Transaction Shares;

"Technical Proposal" means the technical proposal of the Investor, dated \_\_\_\_\_ submitted pursuant to the Request for Proposal and attached hereto as Annexure I;

"Transaction Shares" shall have the meaning ascribed to such term in the Share Sale Agreement;

## **1.2 Rules of Interpretation in this Agreement**

- a) The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement;
- b) The use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Agreement to any Person or Persons or circumstances as the context otherwise permits;
- c) The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Article or Clause of this Agreement. The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this Agreement so specified;
- d) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the immediately following Business Day if the last day of such period is not a Business Day; and whenever any payment to be made or action to be taken

under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the immediately following Business Day;

- e) The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein. The words and expressions beginning with capital letters and not defined herein, but defined in the RFP/SSA, shall, unless the context otherwise requires, have the meaning ascribed thereto therein

### **1.3 Schedules**

The Schedules annexed to this Agreement, as listed below, form an integral part of this Agreement

- Schedule I - Matters Requiring prior approval of the Government.
- Schedule II - Dispute Resolution Procedures.

**ARTICLE 2**  
**EFFECTIVE DATE, PURPOSE AND SCOPE**

**2.1 Effective Date**

This Agreement shall come into force and effect from the Closing Date under the Sale Share Agreement.

**2.2 Compliance with Agreement**

The Shareholders agree at all times, to vote and act in a manner so as to fulfil the provisions of this Agreement and in all other respects to comply with, and use all reasonable efforts to comply with and to cause the Company to comply with, this Agreement. The Investor and Government shall, at all times, cause its respective nominee(s) as directors of the Company to act in accordance with this Agreement including amending the Articles of Association to conform to this Agreement and causing the Company to adopt such amended Articles of Association through the passage of appropriate Board and Shareholder's resolutions and take other actions as required under Law in this regard.

**2.3 Compliance by the Company**

The Company undertakes to carry out and be bound by the provisions of this Agreement to the fullest extent that it has the capacity and power at Law to do so. The Shareholders shall, to the extent possible, cause the Company to take all steps as may be necessary to effectively adopt, abide by and ratify the terms of this Agreement.

**2.4 Compliance with Laws**

In carrying out the obligations specified herein, the Parties shall comply with all applicable Laws.

**ARTICLE 3**  
**EQUITY PARTICIPATION; ADDITIONAL CAPITAL**

**3.1 Equity Participation**

- a) The Investor and the Government hereby represent and warrant to each other that upon the occurrence of the Closing, their equity capital shareholding in the Company shall be in the following percentages and each shall be the legal and beneficial owner of the Equity Shares against their respective names:

Government/UPSTDCL	:	24%
Investor	:	76%

**3.2 Additional Capital**

- a) The Investor shall be required to make a minimum investment of 25% of its Purchase Price in the Units of the Company for their renovation, development and upgradation. This investment shall be made before the Investor proposes to sell its above referred stake in the Company (whether fully or partly). Such investment may be raised by him as Loan/ Equity. Upon the Investor making such investment by way of equity, Government may contribute proportionate investment so as to maintain its percentage of equity at 24% or allow its equity to come down proportionately subject to the Govt retaining a minimum of 11% of the paid up equity.
- b) If the Board, in exercise of good faith and in its reasonable judgement, determines that the Company requires additional funds and the Board decides to raise such funds by way of equity, the Board may request by issuance of notice (the "Funding Notice") to all the Shareholders of the Company, to contribute, within 90 days after the issuance of the Funding Notice (the "Funding Period"), additional capital to the Company, on a pro-rata basis depending upon the number of Equity Shares then held by such Shareholders, by way of subscription for additional Equity Shares in accordance with Section 81(1) of the Act.
- c) If additional capital is to be contributed pursuant to Article 3.2(a) & (b) by way of subscription for additional Equity Shares, then the subscription price for each such additional Equity Shares shall be determined by the Board and set out in the Funding Notice. The Company shall, promptly upon the receipt of such subscription price, issue to its Shareholders the appropriate number of Equity Shares based upon the payment received from each such Shareholder. Such Equity Shares shall rank pari-passu with the existing issued Equity Shares in all respects, except for the purposes of dividend which shall be pro rated to the period for which such newly issued shares are in existence.

If any offer to subscribe for Equity Shares pursuant to Article 3.2(b) (such offer, the "Right") includes a right to renounce the Right in favour of any other Person, then, no Shareholder shall renounce such Right in favour of any third Person (other than, in the case of the Investor to a nominee which is an Associate of the Investor, and in the case of the Government to a nominee which is either a Government Department or

Government Company under the provisions of the Act or is a public financial institution notified under Section 4A of the Act) without first giving the other Shareholders a reasonable opportunity on a pro-rated basis to acquire such Right, either directly or through its nominee or partly directly and partly through its nominee, on the same terms and conditions that such Right is proposed to be renounced in favour of such third Person (other than a nominee of the renouncing Shareholder). The Person in whose favour the Right is renounced should be a creditworthy, genuine and reputed party having a minimum networth equal to the networth of the renouncing Shareholder and shall execute a deed of adherence in the format as annexed hereto as Annexure I, prior to becoming a Shareholder of the Company, whereby it undertakes to adhere to the terms and conditions of this Agreement (Deed of Adherence). Further issue of shares as contemplated in this article will be in such a manner that Investor retains at least 76% of the issued and paid up equity capital of the Company during the entire Lock In Period.

- d) Any Person other than a Party hereto, who acquires any Equity Shares in the Company pursuant to Article 3.2 (c), shall execute a Deed of Adherence prior to becoming a Shareholder of the Company whereby it undertakes to adhere to the terms and conditions of this Agreement.
- e) The rights of such Person shall be determined in the following manner:
- i. Subject to the provisions of Article 3.2 (d) above, in the event that a Shareholder exercises its option to cause its nominee to acquire the Right, such non-renouncing Shareholder shall exercise all the rights and privileges on behalf of such nominee and shall be responsible for all the duties and obligations of such nominee under the terms of this Agreement. The rights of the non-renouncing Shareholder and such nominee shall be the only rights available to the non-renouncing Shareholder under this Agreement and no additional rights or privileges shall accrue to or be available to the non-renouncing Shareholder or the nominee.
  - ii. Subject to the provisions of Article 3.2(c) above, in the event that the non-renouncing Shareholder does not exercise its option to acquire or cause its nominee to acquire the Right and the renouncing Shareholder offers the Right to a third party, such renouncing Shareholder shall exercise all the rights and privileges on behalf of such third party and shall be responsible for all the duties and obligations of such third party under the terms of this Agreement. The rights of the renouncing Shareholder and such third party shall be the only rights available to the renouncing Shareholder under this Agreement and no additional rights or privileges shall accrue to or be available to the renouncing Shareholder or the third party.
- f) For the avoidance of doubt, under no circumstances shall a failure to provide funds by a Shareholder pursuant to a Funding Notice be considered to be default by such Shareholder under this Agreement or make such Shareholder in any way liable for the payment of such funds.

### **3.3 Adherence by Associates**

In the event, that any of the Associates(s) of the Investor becomes a Shareholder of the Company, whether pursuant to a renunciation of a Right under Article 3.2 or otherwise, such Associate of the Investor shall adhere to this Agreement and be compliant with the provisions hereof and shall execute a deed of adherence, prior to becoming a Shareholder of the Company, whereby it undertakes to adhere to the terms and conditions of this Agreement.

**ARTICLE 4**  
**BUSINESS AND MANAGEMENT OF THE COMPANY**

**4.1 Business**

The Company shall carry out its Business in terms of its Memorandum and Articles of Association or any amendment thereof from time to time and in this regard, the Shareholders shall take all the needful steps to ensure that Company is doing the Business in line with this Agreement and its business objectives as mentioned in its Memorandum of Association.

**4.2 Board of Directors**

- a) The Company shall have a Board consisting of not more than 15(fifteen) directors who shall be nominated as follows:
  - i. The Government shall be entitled throughout the term of this Agreement to nominate 2 (two) Directors on the Board. One of such Government nominee directors would be Non-Executive Chairman and other will be non-executive director; However, in case, Government's shareholding falls below 15%, Government shall, after the Lock-In Period of three years, agree to restrict its right to appoint Nominee Director to a maximum of one instead of two Non Executive Directors
  - ii. The Investor shall be entitled to nominate directors on the Board in proportion to its equity shareholding in the Company provided such number shall throughout the term of this Agreement not exceed 6 (six) in number. The Managing Director shall be appointed from amongst the Directors nominated by the Investor; and
  - iii. The Board shall nominate such number of independent directors as may be required for compliance with corporate governance laws and shall also have the authority to appoint a lender's director, maximum of two in number, in case the Company decides to avail any financial assistance.
- b) The Parties agree that immediately after Closing, the constitution of the Board shall be as per Clause 4.2(a) above.
- c) Both Government and the Investor shall vote in proportion to the Equity Shares held by them to elect/ remove the directors nominated in accordance with this Agreement.

**4.3 Removal and Replacement of Nominee Directors**

Government and the Investor shall be entitled to remove any director nominated by them by notice to such director and the other Parties. Any vacancy occurring on the Board because of the removal, death, disqualification, inability to act, shall be filled by the Party whose nominee was so affected so as to maintain a Board that is consistent with the provisions of Article 4.2(a).

**4.4 Meeting of Board**

- a) The Board shall meet at least once every calendar quarter period during the term of this Agreement and in the event that a meeting of the Board is not held during any such quarter period, any director may call a meeting of the Board on 48 (forty eight) hours prior notice to the other directors. At each meeting of the Board, unless waived by at least one nominee director each of the Investor and Government, the Managing Director shall duly report or cause to be reported to the Board with respect to the current status of the operations of the Company and with respect to all major developments or planned action involving the Company and shall present to the meeting complete current financial information with respect to the Company.
- b) At any time any Director of the Company may convene a special meeting of the Board to discuss any matter which cannot reasonably be postponed to the next regular meeting of the Board. Notice of the special meeting of the Board shall be given to all the Directors not less than 7 (seven) days prior to the scheduled date of such special meeting, unless a shorter period is agreed to by all the Directors.
- c) The quorum for a meeting of the Board shall be one-third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher provided however, that no quorum shall exist unless at least one director nominated by the Government is present. In the absence of quorum the meeting shall automatically stand adjourned and be reconvened in accordance with Article 4.4(d).
- d) In the event of absence of a quorum in a meeting referred to in Article 4.4(c), the meeting shall automatically stand adjourned till the same day in the next week or on such later day as may be decided by the Chairperson at registered office of the Company and notified to the Government nominee director under Registered Post/ Speed Post provided that such day is not a public holiday. The quorum for a meeting of the Board reconvened in accordance with this Article 4.4(d) shall be one- third of its total strength (any fraction contained in that one-third being rounded off as one), or any two directors, whichever is higher.
- e) In the event the Government nominated director is not present in the reconvened meeting referred to in Article 4.4(d), it shall be deemed that the presence of the Government nominated director is not required for such meeting and the directors present at such meeting shall be entitled to proceed with the items on the agenda in such manner as they deem fit even though such items may be relating to matters referred to in Article 4.5 read with Schedule I.
- f) Further it is expressly agreed between the Parties hereto that the following matters specified hereunder can be decided by the Company only in a Board Meeting in which a Government nominee Director is present and gives his Consent
  - i. Change in the Main Objects of the Company.
  - ii. The making, directly or indirectly, of loans or advances in any Financial Year in excess of Rs.10,00,000 (Rupees Ten Lakh) only to any Person other than in the ordinary course of business of the Company.
  - iii. Obtaining directly or indirectly, of loans or advances in any Financial Year in excess of Rs.200,00,000/- (Rupees Two Crore) only

- iv. The entering by the Company into any business relations or contracts (including the conclusion or termination of Agreement) having commitment exceeding Rs. 100,00,000 /- (Rupees One Crore) with any Associate of the Investor and/or the Consortium Member(s).
- v. The granting of any security or creation of any encumbrances on the assets of the Company or guaranteeing the debts or performance of any person for other than the Business of the Company.
- vi. Issue of further Equity Share capital

#### **4.5 Approval of Matters**

Notwithstanding any other provisions of this Agreement or in the Articles of Association or otherwise permitted under the Act, no obligation of the Company shall be entered into, no decision or the determination shall be made and no action shall be taken by or with respect to the Company in relation to the matters identified in Schedule I, unless specific approval of the Government has been obtained.

#### **4.6 Managing Director**

Throughout the term of this Agreement, the Company shall have a Managing Director to be appointed by the Board from amongst the directors nominated by the Investor. The term of the office of the Managing Director shall be determined by a resolution of the Board. The Managing Director shall be a member of the Board who shall be entrusted with substantial powers of management of the Company. The Managing Director shall function under the supervision, control and direction of the Board and subject to such supervision, control and direction shall have the authority to manage the business operation of the Company. Subject to the provisions of Article 4.5 read with Schedule I, the powers and duties of the Managing Director shall be defined and/ or modified from time to time by resolution of the Board, and shall include the powers and duties to:

- a) incur capital expenditure which has been previously approved by the Board and any other operational expenditure;
- b) appoint and terminate any buyers, suppliers, ancillaries, franchisees and distributors;
- c) make decisions regarding the marketing of the Company's products/services including determining the advertisement policy and budgets thereof; and
- d) take such actions or execute such contracts on behalf of the Company that are in the ordinary course of business of the Company except as specified in Article 4.5.

#### **4.7 Protection against Asset Stripping**

Notwithstanding anything to the contrary contained elsewhere in this Agreement, and notwithstanding the termination of this Agreement pursuant to Article 9.10 (iii) hereof, the Investor agrees that, no sale, transfer, mortgage, lease, pledge, hypothecation of any immovable Assets of the Company shall be made. Further, the Investor undertakes that no sale, transfer, mortgage, lease, pledge, hypothecation of any movable Assets of the Company shall take place except in due course of Business. However, Business Loan can be raised by mortgage, pledge, hypothecation of any assets with the approval from the Board for the development of the Company's Assets.

**ARTICLE 5  
DEALING WITH SHARES**

**5.1 Restrictions in relation to Equity Shares**

- a) The Investor expressly agrees and undertakes that it shall not for a period of 3 (three) years from the Closing Date, directly or indirectly, sell, transfer, assign, pledge, charge, grant a beneficial interest in, grant any option or right to purchase, or in any other way dispose or encumber (collectively, "Transfer") 76% of the Issued Equity Share Capital to any Person;

Provided however that the aforesaid restriction shall not apply if a pledge of Equity Shares is made by the Investor pursuant to Article 5.1(c).

- b) The Parties agree that in the event that any share transfer committee is constituted, no Transfer of any Equity Shares held by any Shareholder shall be approved by such share transfer committee without an affirmative vote of the nominee of the Government on the share transfer committee. Provided however, that the Government nominee on the share transfer committee shall not withhold its approval to any Transfer of Equity Share(s) if such Transfer is in accordance with the terms of this Agreement.
- c) The Investor may with the prior written approval of Board, pledge the Equity Shares held by it with an Indian financial institution, a Scheduled Bank or a recognised international lender as security for any loan or advances made by such financial institution, Scheduled Bank or recognized international lender to the Company for its Business.

**5.2 Notice of Restrictions**

- a) The Transaction Shares and any subsequent Equity Shares as may be issued to the Investor and constituting 76% of the issued and paid up share capital of the Company shall not be transferable for a period of 3 years except in accordance with this Agreement. The Share Certificate will bear a note to this effect regarding non transferability of shares during the Lock In Period.

**5.3 Right of First Refusal**

- a) If the Government desires to sell all or any of the Equity Shares held by it on the date of this Agreement or any other Equity Shares acquired pursuant to this Agreement, or if the Investor desires to sell, subject to Article 5.1(a) as regards lock in period, all or any of the Transaction Shares or any other Equity Shares acquired pursuant to this Agreement, Government or the Investor, as the case may be (the "Offeror") shall first offer (the "Offer") to sell such Equity Shares to the other Shareholder (the "Other Shareholder"). The Offeror shall send a notice of the offer (the "Sale Notice") to the Other Shareholder irrevocably offering to sell the Offer Shares, for cash, to the Other Shareholder.

- b) The Sale Notice shall clearly stipulate among other things, the number of Equity Shares of the Company that the Offeror desires to sell (the "Offer Shares"), the price at which it wishes to sell the Offer Shares (the "Offer Price"), and details of any willing third party buyer.
- c) Upon the Sale Notice being given, the Other Shareholder shall have the right exercisable at its sole discretion, to purchase all, but not less than all, of the Offer Shares. The Offer Shares could be purchased by the Other Shareholder either directly and/or through its Associates (in case the Investor is the Other Shareholder) or nominees (in case the Government is the Other Shareholder).
- d) Within 15 Business Days of the Sale Notice (the "Offer Period"), the Other Shareholder may give to the Offeror a notice in writing (an "Acceptance Notice") accepting the offer contained in the Sale Notice. If the Other Shareholder gives the Acceptance Notice, the transaction of purchase and sale of the Offer Shares shall be completed within 45 (forty five) Business Days of the expiry of the Offer Period.
- e) If the Other Shareholder does not give Acceptance Notice in accordance with the provisions of Article 5.3(d), the rights of the Other Shareholder, subject to the terms provided in this Article 5.3 to purchase the Offer Shares shall cease and the Offeror may sell the Offer Shares to any Person or Persons, provided the buyer of such shares is a credit worthy party having a minimum networth atleast equal to the networth of the Offeror and the buyer agrees to adhere to this Agreement and execute a Deed of Adherence.
- f) In the event that the Offeror is Government and the Other Shareholder being the Investor does not give the Acceptance Notice in accordance with the provisions of Article 5.3(d), Government may decide, in exercise of rights of an Offeror provided in Article 5.3(e), to offer the Offer Shares to any person.
- g) All Sale Notices, Acceptance Notices or any other notices given under this Article 5.3 shall be given concurrently to the Company.

#### **5.4 Permitted Transfers**

- a) Notwithstanding anything contained in this Article 5, any Equity Shares held by the Investor may be Transferred to a Person within the Lock In Period who is an Associate of the Investor provided that, in connection with any such Transfer (i) the transferee shall, in writing (in form and substance reasonably satisfactory to the Government), assume all rights and obligations of the transferor under this Agreement and agrees to be bound by all the terms and conditions of this Agreement, and (ii) effective provision is made whereby the transferee and the transferor are bound, prior to the transferee ceasing to be an Associate of the Investor to effect the Transfer back to the Investor or any of the Associate of the Investor of all (but not less than all) of such Equity Shares held by the transferee.

- b) Notwithstanding the Transfer of Equity Shares by the Investor to an Associate pursuant to Article 5.4(a), the Investor shall continue to be bound by all the obligations under this Agreement as the principal obligor. In computing the shareholding of the Investor for determining the rights and privileges under this Agreement, the Equity Shares held by its Associates shall be considered as held by the Investor.
- c) Where the Investor is a Consortium, inter-se transfer of shares among the members of the Consortium may be permitted by the Authority during the Lock In Period after execution of Share Sale Agreement, only where:
- (i) the Lead Member continues to be the Lead Member of the Consortium and shall maintain atleast 26% equity holding in the Consortium;
  - (ii) the Member satisfying Technical qualification continues to be the same and shall continue to maintain atleast 26% equity holding in the Consortium.
  - (iii) Other members shall also continue to hold minimum 10% of the equity holding in the Consortium.
  - (iv) The networth criteria is fulfilled.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES**

**6.1 Company's Representations and Warranties**

The Company represents and warrants to each of the Shareholders that:

- a) It is duly incorporated or created and is validly subsisting and in good standing under the laws of India with power and authority to own its properties and conduct its business.
- b) It has all the necessary corporate power, authority and capacity, including under its Articles of Association, to enter into this Agreement and to carry out its obligations under this Agreement.
- c) No Person has any agreement or option or right capable of becoming an agreement for the purchase, subscription or issue of any shares of the Company save and except as provided for in this Agreement and the Share Sale Agreement.

**6.2 Investor's and Consortium Members' Representations, Warranties and Covenants**

Investor/Each of the Investor and the Consortium Members represent(s) and warrant(s)/jointly and severally represents and warrants to, and covenants with/jointly and severally covenants with, each of the Government and the Company that:

- a) Investor/Each of the Investor and the Consortium Members have been duly incorporated or created and is validly subsisting and in good standing under the laws of jurisdiction indicated in the preamble to this Agreement;
- b) Investor/each of the Investor and the Consortium Members have the corporate power and authority to enter into and perform its obligations under this Agreement;
- c) This Agreement has been duly authorized, executed and delivered by Investor/each of the Investor and the Consortium Members and constitutes a valid and binding obligation enforceable against it/each of them in accordance with its terms;
- d) Investor/Any of the Investor and the Consortium Members is not a party to, bound or affected by or subject to any indenture, mortgage, lease agreement instrument, charter or by-law provision, statute regulation, judgement, decree or law which would be violated, contravened, breached by or under which default would occur or under which any payment or repayment would be accelerated as a result of the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement;
- e) Investor/each of the Investor and the Consortium Members shall not retrench any transferred Employees of the Company other than any dismissal or termination of such transferred Employees of the Company from their employment in accordance with the applicable service rules/staff regulations, standing orders of the Company and applicable Law;

- f) Within 6 months of the Closing Date and not later than 12 month of the Closing Date, the Investor shall offer a Voluntary Retirement Scheme to the transferred Employees. Such Voluntary Retirement Scheme shall not be in any way inferior or less favourable to the employees than the Voluntary Retirement Scheme of the Government of Uttar Pradesh.
- g) The Investor/ the Investor and the Consortium Members shall cause the Investor to exercise its voting rights by virtue of the Equity Shares, directly or indirectly held by it, to ensure that all provisions of this Agreement to the extent required are incorporated in the Articles of Association;
- h) The Investor shall not/ neither the Investor nor the Consortium Members have made any assignment for the benefit of creditors nor has been adjudged insolvent or bankrupt. Further, the Investor/each of the Investor and the Consortium Members are not the subject of any proceeding under any insolvency or bankruptcy laws, nor is any winding up or like natured proceeding pending or adjudicated against it in any court of law;
- i) The Investor shall and the Consortium Members shall cause the Investor to, cause the Company to honour all the outstanding contracts and commitments and ensure timely payment of all the existing debts and/or liabilities of the Company outstanding as on the Closing Date;
- j) To the best of the Investor/ each of Investor and the Consortium Members' knowledge there is no suit, action, litigation, investigation, claim, complaint or proceedings in progress or pending or threatened against or relating to the Investor and/or the Consortium Members, which, if determined adversely to the Investor and/or the Consortium Member(s), could prevent the Investor and/or the Consortium Member(s) from fulfilling all or any of its obligations set out in this Agreement or arising from this Agreement and the Investor/each of the Investor and the Consortium Members have no knowledge of any existing ground on which any such action, suit, litigation or proceeding might announce with any reasonable likelihood of success;
- k) The representations and warranties made by the Investor/Investor and the Consortium Members in terms of the Share Sale Agreement, whether by way of reference or otherwise, shall remain valid throughout the term of this Agreement; and
- l) Except as set forth in this Agreement, neither the Investor nor the Consortium Members have entered nor shall enter into any agreement, arrangement or understanding with any third party, that obligates the Investor to vote the Equity Shares held by it in any specific manner with respect to any matter.

### **6.3 Government's Representations and Warranties**

Government represents and warrants to each of the Company and the Investor that:

- a) It has the power and authority to enter into and perform its obligations under this Agreement;
- b) This Agreement has been duly authorised, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms;
- c) It shall vote all the voting Equity Shares of the Company held by it to ensure that all provisions of this Agreement to the extent required, are incorporated in the Articles of Association; and
- d) Except as disclosed in the Disclosed Information or the Share Sale Agreement, to the knowledge of the Government, neither the execution and delivery of this Agreement by the Government, nor the performance by the Government of its obligations hereunder nor compliance by the Government with the provisions hereof will violate, adversely affect, contravene or breach or create a default or accelerate any obligation under any indenture, mortgage, lease, agreement, instrument, charter or by-law provisions, statute, regulation, judgement, ordinance, decree, writ, injunction or law applicable to the Government.

**ARTICLE 7**  
**INDEMNIFICATION AND CONFIDENTIALITY**

**7.1 Indemnification**

Each of the Shareholders, Consortium Members and the Company agrees to indemnify, defend and hold harmless each other and their respective lawful successors and assigns from and against any and all Claims incurred or suffered by the Company or such other Shareholders or Consortium Members which arise out of; results from, or may be payable by virtue of any breach of any representation, warranty, covenant or agreement made or obligations required to be performed by the indemnifying Person pursuant to this Agreement; provided, however that in no event shall the indemnifying Person be liable in contract, tort, misrepresentation, warranty, negligence, strict liability or otherwise, for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement, or any performance, non-performance or breach of any provision hereof.

**7.2 Confidentiality**

- a) The Investor agrees that it shall not, at any time or under any circumstances, subject to the provisions of Sub-Article 7.2(c), without the prior written consent of the Company and Government, directly or indirectly communicate or disclose to any Person (other than an Associate of the Investor) any knowledge or information, irrespective of form, howsoever acquired by them relating to the customers, products, technology, trade secrets, systems, operations or other confidential information regarding the property, business and affairs of the Company or any of its subsidiaries including, but not limited to any foreign collaboration agreements and technical collaboration agreements entered into by the Company or any of its subsidiaries ("Confidential Information").
- b) Provided however that the confidentiality obligation under this Article 7.2 shall be subject to the following exceptions:
  - i. Disclosure to the employees and auditors requiring the information for the purposes of this Agreement subject to the execution of a confidentiality agreement by them; or
  - ii. Disclosure to legal advisors and professional consultants subject to the execution of a confidentiality agreement by them; or
  - iii. If the information is, prior to the execution of this Agreement lawfully in the possession of the Investor through sources other than the Party(ies); or
  - iv. If such information has been released or disclosed by requirement of Law; or
  - v. If the information is or becomes generally and publicly available, other than due to reason of breach of this Agreement.
- c) The Investor shall maintain and cause to be maintained all Confidential Information obtained from the Company or from a party providing it on behalf of the Company, as secret and confidential as per the terms of Article 7.2 herein, and shall continue to do so for a period of 3 (three) years from the date of termination of this Agreement.

**ARTICLE 8  
GOOD FAITH**

- 8.1 Each of the Investor and the Consortium Members confirms that it has prior to the Closing, disclosed particulars to Government of any activities or business that it or any of its Associates are engaged in which are in competition with and/or is similar to the business of the Company.
- 8.2 In the event the Investor or the Consortium Members or any of their Associates or nominees at any time after Closing, decides to undertake any activities or business that may be or is in competition with the then existing business of the Company, the Investor shall and the Consortium Members shall cause the Investor to disclose such activity or business to the Government.
- 8.3 The Investor and the Consortium Members agree that, in the event that, at any time, the Investor or the Consortium Member(s) or any of their Associates or nominees is engaged in any activities or businesses that may be or is in competition with the Company's business, both existing or future, then the Investor, Consortium Members, their Associates or nominees shall always act in good faith and in the best interest of the Company.

**ARTICLE 9  
MISCELLANEOUS**

**9.1**

**9.2 Dispute Resolution**

Any and all claims, disputes, questions or controversies involving any of the Parties hereto and arising out of or in connection with this Agreement, including the execution, interpretation, validity, performance, breach or termination hereof, (collectively, “Disputes”), shall be resolved and settled, subject to the procedures set out in Schedule II of this Agreement.

**9.3 Application of this Agreement**

The terms of this Agreement shall apply mutatis mutandis to any shares:

- a) resulting from any conversion, reclassification, re-designation, subdivision or consolidation or other changes of the Equity Shares or preference shares of the Company; and
- b) of the Company or any successor body corporate which may be received by the Shareholders as a result of any merger, amalgamation, arrangement or other reorganisation of or including the Company.

Prior to effectuating any action under the aforesaid Article 9.2, the Parties shall consider any changes, which may be required to this Agreement in order to give effect to the intent of this Article.

**9.4 Non-Sovereign Act**

The execution, delivery and performance by the Government of this Agreement and any other related agreements to which it is a party constitute commercial acts done and performed for commercial purposes and do not constitute sovereign acts and the Government, saving and excepting the present or future assets and properties concerning the military of the Government or any diplomatic/consular office or the constitutional authorities (of India) and their offices, waives any and all rights of immunity that it or any of its assets may have or may acquire in future against the institution of any legal or arbitral proceedings and the enforcement of any judgement, settlement or arbitral award.

**9.5 Further Assurances**

The Parties shall, with all reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required

by any other party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.

### **9.6 Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, liquidators and successors of the Parties hereto. Irrespective of whether or not the Articles of Association and/or memorandum of association of the Company fully incorporate the provisions hereof or any of them, Government and the Investor's rights and obligations shall be governed by this Agreement and in the event of any ambiguity or inconsistency between the Articles of Association and the provisions of this Agreement the provisions of this Agreement shall prevail.

### **9.7 Entire Agreement**

Except as expressly stated in this Agreement, this Agreement constitutes the entire agreement between the Parties to this Agreement with respect to the subject matter of this Agreement. This Agreement cancels and supersedes any prior understanding and agreements between the Parties with respect to such subject matter except as specifically excluded herein. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between the Parties other than those expressly set forth in this Agreement and the Share Sale Agreement.

### **9.8 Amendments and Waivers**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all of the Parties to this Agreement. To the extent any such modification or amendment requires a corresponding modification or amendment to the Articles of Association and/ or Memorandum of Association, the Parties shall use their best efforts in good faith to cause all such modifications or amendments to the Articles of Association and/or the Memorandum of Association of the Company. No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

### **9.9 Assignment**

No assignments of their rights contained in this SHA can be made by the parties to this SHA..

### **9.10 Termination**

- a) This Agreement shall terminate upon :-
  - i. the written mutual agreement of each of the Company, Investor, Consortium Members (in case of Consortium) and Government to terminate this Agreement; or
  - ii. the dissolution or bankruptcy of the Company; or

- iii. Unless otherwise agreed to, either the Investor or the Government, directly or indirectly, ceases to hold the legal and beneficial ownership of, in case of the Investor at least 76% and in case of Government at least 11% of the issued, subscribed and paid-up equity share capital of the Company.
  - iv. Any breach by the Investor of any of its representations, warranties and/or undertakings herein.
- b) In the event of any termination pursuant to Article 9.10(a)(i) a 15 (fifteen) Business Days written notice setting forth the reasons therefor shall promptly be given by the terminating Party, to the other Party(ies).
  - c) In case of termination of this SHA by Government in the event of default by Investor, the Government shall not be liable to the Investor in any manner whatsoever including any repayment of purchase price.

### 9.11 Survival

- a) Notwithstanding anything to the contrary in this Agreement, any termination pursuant to Article 9.10. will not affect the effectiveness of Articles 1, 6, 8 and 9, Schedule II and additionally to the extent that the termination is caused pursuant to Article 9.10 the effectiveness of Articles 5.3, 5.4 and Schedule II of this Agreement and the Parties obligations stated therein.
- b) No termination of this Agreement or any agreement related hereto shall release any Party from any liability to any other party which at the time of such termination has already accrued, nor affect in any way the survival of any right or obligation of any Party which is expressly stated elsewhere in this Agreement or in any agreement related hereto to survive the expiration or termination hereof.
- c) If after termination of this Agreement, the consent of the Government is required for any matter under this Agreement including Article 4.6, the Parties agree that the Principal Secretary, Department of Tourism of Government of Uttar Pradesh shall be the authorised representative of the Government for such purpose.

### 9.12 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part of such provision and the remaining part of such provision and all other provisions of this Agreement shall continue to be in full force and effect.

### 9.13 Notices

Any notice or other writing required or permitted to be given under this Agreement or for the purposes of this Agreement (referred to in this section as a "Notice") to any Party shall be sufficiently given if delivered personally, or if sent by prepaid registered mail or if transmitted by fax or other form of recorded communication tested prior to transmission to such Party;

- a) in the case of a notice to Government, at:  
Attention: Principal Secretary  
Address: Department of Tourism Government of Uttar Pradesh.  
Fax:

(b) in the case of Notice to the Investor, at:

Attention:

Address:

Fax:

(c) in the case of Notice to the Consortium Member, at:

Attention: Lead Member

Address:

Fax:

(d) in case of Notice to the Company, at:

Attention:

Address:

Fax:

Or at such other address as the Party to whom such Notice is to be given shall have last notified to the Party giving the same in the manner provided in this sub-article 9.13. Any Notice personally delivered to the Party to whom it is addressed as provided in this Article shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day then the Notice shall be deemed to have been given and received in the manner provided for in Article 1.2(d). Any Notice sent by prepaid registered mail shall be deemed to have been given and received on the fifth Business Day next following the date of its mailing. Any Notice transmitted by fax or other form or recorded communication shall be deemed given and received on the first Business Day after its transmission.

The Parties hereby expressly agree that within 7 (seven) days of any change in the address as specified above in this sub-Article 9.13, they would intimate the same to the other in writing at the above specified address.

#### **9.14 Governing Law**

This Agreement shall be governed and interpreted by and construed in accordance with the laws of India without giving effect to the principles of conflict of laws there under. Courts at Lucknow shall have the exclusive jurisdiction.

#### **9.15 Counterparts**

This Agreement may be executed by the Parties in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

#### **9.16 Interest**

Any amount properly due and payable to a Party pursuant to this Agreement and remaining unpaid after the date when payment was due and payable shall bear interest, such interest to accrue from day to day at a rate equal to two percentage points above the State Bank of India's prevailing prime lending rate for rupee loans, from the date when payment was due and payable until the amount due is actually received by the payee.

IN WITNESS WHEREOF, EACH OF THE PARTIES HAVE CAUSED THIS Agreement to be duly executed by their authorised representatives on the date and year first hereinabove written

For and on behalf of the  
Governor of Uttar Pradesh (the Government of UP)

Signed By:

Designation:

Witnessed by :

Name:

Address

For and on behalf of (Investor) having authority to sign on the behalf of  
Investor vide resolution dated [\_\_\_\_\_] of the board of directors

Signed by:

Designation Witnessed by :

Name:

Address

For and on behalf of (Investor/Lead Member) having authority to sign on the behalf of  
Investor vide resolution dated [\_\_\_\_\_] of the board of directors

Signed by:

Designation Witnessed by :

Name:

Address

For and on behalf of (Consortium Member1) having authority to sign on behalf of  
Consortium Member1

vide resolution dated [\_\_\_\_\_] of the board of directors Signed by:

Designation Witnessed by :

Name:

Address

For and on behalf of (Consortium Member 2) having authority to sign on behalf of  
Consortium Member 2

vide resolution dated [\_\_\_\_\_] of the board of directors

Signed by:

Designation

Witnessed by :

Name:

Address

For and on behalf of (Consortium Member 3) having authority to sign on behalf of  
Consortium Member 3

vide resolution dated [\_\_\_\_\_] of the board of directors

Signed by:

Designation

Witnessed by :

Name:

Address

For and on behalf of the Company  
vide resolution dated [\_\_\_\_] of the board of directors

Signed by:

Designation

Witnessed by:

Name:

Address

**SCHEDULE I**

**MATTERS REQUIRING PRIOR APPROVAL OF GOVERNMENT**

- i. Any alteration of the Capital Structure of the Company which has the effect of reducing the Government shareholding to less than 11% of the paid up share capital.
- ii. Commencement of any new line of business not related to Hospitality Services and/ or discontinue existing line of Business.
- iii. Taking any steps to wind-up or terminate the corporate existence of the Company
- iv. Entering into of an amalgamation, merger or consolidation with any other company or body corporate.
- v. Establishment of any subsidiary or associated company (ies) with objects other than Hospitality Services by the Company.
- vi. Sale of surplus land for development of the Unit(s)/ setting up of other Hospitality/ Tourism services.
- vii. Any commitment or agreement to do any of the foregoing.
- viii. Change in Registered Office of the company during the Lock- In Period of 3 years.

**SCHEDULE II**

**DISPUTE RESOLUTION**

a) Dispute resolution

Disputes which cannot be finally resolved by the Parties within 30 (thirty) calendar days of the arising of a Dispute by amicable negotiation (each Party in good faith making its best effort to reach a reasonable and equitable resolution of the matter) shall be immediately referred for resolution by good faith negotiation between their respective senior officers with decision-making power and who shall not have had substantive involvement in the matters involved in the Dispute, unless the Parties otherwise agree. If any such panel of senior officers is unable to resolve and settle the Dispute within 60 (sixty) calendar days after the Dispute is first submitted to it, then any Party shall be entitled to cause the Dispute to be submitted for arbitration pursuant to the terms of Paragraph (b) of this Schedule III.

b) Arbitration

Any Dispute which is not settled in accordance with Paragraph (a) of this Schedule III shall be submitted to arbitration in accordance with the provision of the Arbitration Act. The Disputes shall be referred to a sole arbitrator if the Government and the Investor agree upon a sole arbitrator. In the event a sole arbitrator cannot be agreed upon within 30 (thirty) days of the Dispute having been submitted to arbitration, the arbitral tribunal shall comprise of three arbitrators, one to be appointed by each of Government and the Investor and the third to be jointly appointed by the two arbitrators appointed by the Parties. The venue of arbitration shall be Lucknow, India. The language to be used in the arbitration shall be the English language, and any award shall be made in the English language. In connection with the arbitration proceedings, the Parties to the Dispute hereby agree to cooperate in good faith with each other and with the arbitral tribunal and to use their respective best efforts to respond promptly to any reasonable discovery or demand made by the other Party(ies) and/or the arbitral tribunal. Each of the Parties expressly understands and agrees that the arbitral award shall be the sole, exclusive, final and binding remedy between them regarding the Dispute(s) presented to the arbitral tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction. (c) Continuing obligations Neither the existence of any Dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this Agreement.

The pendency of a Dispute in any arbitration proceeding shall not affect the performance of the obligations of the Parties under this Agreement.