

REQUEST FOR PROPOSAL

FOR

**SELECTION OF OPERATOR FOR OPERATION, MAINTENANCE AND
MANAGEMENT OF SHRI CHINTPURNI SADAN BLOCK-C, DISTRICT UNA,
HIMACHAL PRADESH ON PPP MODE.**



ISSUED BY:

**The General Manager,
Himachal Pradesh Infrastructure Development Board,
New Himrus Building, Himland, Circular Road, Shimla - 171001**

August, 2021



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CONTENTS OF RFP DOCUMENTS

S. No.	Parts of RFP	Pages
1	VOLUME I (INFORMATION TO BIDDERS)	
2	VOLUME II (DRAFT CONCESSION AGREEMENT)	

CONTENTS OF VOLUME– I

- I. This Volume-I of the RFP documents comprise of the Disclaimer set forth herein below, the contents as specified hereinafter, and will additionally include Addenda issued by **The General Manager, Himachal Pradesh Infrastructure Development Board**, if any:

Information to Bidders	
SECTION 1	INTRODUCTION
SECTION 2	INSTRUCTION TO BIDDERS
SECTION 3	EVALUATION OF BIDS
SECTION 4	FRAUD AND CORRUPT PRACTICES
SECTION 5	PRE-BID CONFERENCE
SECTION 6	MISCELLANEOUS

Appendices

- I. Letter comprising the Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Joint Venture
- IV. Joint Bidding Document
- V. Letter comprising the Financial Bid
- VI. Bank Guarantee for Bid Security

Annexures

Annexure-A: Check list of facilities for classification/ re-classification of operational hotels issued by MOT, Govt. of India

Annexure-B: Photographs of Shri Chintpurni Sadan Block-C (Hotel & Restaurant)

- II. The Draft Concession Agreement provided in Volume– II, as part of the Bid Documents shall be deemed to be part of this RFP.

**Himachal Pradesh Infrastructure Development Board, Himachal Pradesh****NOTICE INVITING REQUEST FOR PROPOSAL****Dated: 18.08.2021**

The General Manager, Himachal Pradesh Infrastructure Development Board, Himachal Pradesh (the “**HPIDB**”) on behalf of the Temple Trust Mata Shri Chintpurni, Teh. Amb, District Una, Himachal Pradesh through The Commissioner (Temple)-cum Deputy Commissioner, Una (the “**Authority**”), invites interested entities to participate in the bidding process for the **Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**. The summary of various activities with regard to this invitation of bids is listed in the activity table below:

S. No.	Items	Description
1.	Name of the Project	Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode.
2.	Mode of submission of bids	Hard copy submission
3.	Cost of Bid Document	Rs.11,800/- (Rupees Eleven Thousand and Eight Hundred only). This cost is inclusive of GST.
4.	Bid Security Amount	Rs.2 lakhs
5.	Bid Document on portal, i.e., Start Date & Time	Start Date: 21.08.2021 on the portal: http://himachalservices.nic.in/hpidb/ or physically collected from the office of the General Manager, HPIDB, Himachal Pradesh.
6.	Last Date for sending Pre-Bid/ RFP Queries	06.09.2021 by email on hpidb-hp@nic.in or by post to the General Manager, HPIDB at the address of HPIDB mentioned in this RFP
7.	Date of Pre-Bid Conference	07.09.2021 at 3.00 P.M. IST at HPIDB, Himland, Shimla, Himachal Pradesh or online through Video Conferencing. (must share your details by email before pre-bid meeting, if wish to join by Video Conference)
8.	Date for response to Pre-Bid queries	14.09.2021 on the portal: http://himachalservices.nic.in/hpidb/
9.	Last date for Bid	05.10.2021 till 4:00 PM IST

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



	submission (Bid Due Date)	
10.	Date & Time for opening of Technical Bid	05.10.2021 at 04:30 P.M. IST in the office of HPIDB, Shimla, Himachal Pradesh or through Video Conferencing(<i>details will be provided later on the portal</i>)
11.	Date & Time for opening of Financial Bid	To be notified subsequently to technically shortlisted Bidders

1. Bidding Document can be seen on and downloaded from the portal: <http://himachalservices.nic.in/hpidb/> or purchased physically from the office of the General Manager, HPIDB, Himachal Pradesh (H.P.), by the interested parties.
2. Where the Bidding Document is downloaded from the aforesaid portals, then the Bidding Document Fee has to be submitted at the time of submission of Bid through Demand Draft of **Rs.11,800/- (Rupees Eleven Thousand and Eight Hundred only)** inclusive of GST in favour of the “**Himachal Pradesh Infrastructure Development Board**” payable at Shimla. If purchased directly from the office of HPIDB, then payment shall be made by way of Demand Draft at the time of purchase and receipt thereof enclosed in the Bid.
3. The Bidding Process can be postponed or cancelled at any time by the HPIDB and no claim shall be entertained on this account.
4. For further details and bidding schedule, visit the portal <http://himachalservices.nic.in/hpidb/>
5. HPIDB shall in no event accept any conditional Bid from the Bidders.

**General Manager,
Himachal Pradesh Infrastructure Development Board**



DISCLAIMER

The information contained in this Request for Proposal (the “**RFP**”) document or subsequently provided to Bidder(s) (the “**Addenda**”), whether verbally or in documentary form or any other form by or on behalf of the HPIDB and/or The Commissioner (Temple) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor an invitation by the HPIDB and/or The Commissioner (Temple), to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with the information that may be useful to them in making their technical and financial offers pursuant to this RFP (the “**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the HPIDB and The Commissioner (Temple) in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all the persons, and it is not possible for the HPIDB and The Commissioner (Temple) its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The HPIDB and The Commissioner (Temple) accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The HPIDB and The Commissioner (Temple), its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid stage.

The HPIDB and The Commissioner (Temple) also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



The HPIDB and The Commissioner (Temple) may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the HPIDB is bound to select a Bidder or to appoint the Selected Bidder or Operator, as the case may be, for the Project and the HPIDB reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the HPIDB and/or The Commissioner (Temple) or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the HPIDB and/or The Commissioner (Temple) shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding process.



VOLUME I – INFORMATION TO BIDDERS

HPIDB WEBSITE 19.08.2021



OFFICE OF THE COMMISSIONER (TEMPLE), UNA, H.P.

1. INTRODUCTION

1.1. BACKGROUND

- 1.1.1. The Chintpurni town in District Una, Himachal Pradesh is home to the Maa Chintpurni Temple which is a major pilgrimage site as one of the 51 Shakti Peethas in India (Chhinnamastika Shakti Peeth). A large number of devotees visit shrine on daily basis, especially during Navratras when the temple organizes big fairs and festivity and a large number of people visit the holy shrine to pay obeisance and seek blessings of the Goddess. Mata Shri Chintpurni Temple has constructed Shri Chintpurni Sadan Block-C built-up with a view to provide accommodation and dining services at Chintpurni town to the devotees visiting the shrine.
- 1.1.2. Temple Trust Mata Shri Chintpurni, Teh. Amb, District Una, represented by the Commissioner (Temple)-cum-Deputy Commissioner, Una (the “**Authority**”) are desirous of selecting a Service Provider for Operation & Management of Shri Chintpurni Sadan Block – C, District Una (A Commercial Complex – Hotel & Restaurant) in state of Himachal Pradesh on PPP mode [Operation, Management and Transfer basis] to provide affordable and reasonably priced accommodation and dining services to the visitors/ tourists visiting the town of Chintpurni and/ or the temple of Mata Chintpurni to pay homage and obeisance.
- 1.1.3. HPIDB is a statutory Board established under the Himachal Pradesh Infrastructure Development Act, 2001 and is a nodal agency in the State of Himachal Pradesh for facilitating the development of a variety of infrastructure projects on Public Private Partnership (PPP) basis and has been mandated by the Authority for managing the bidding process on its behalf for “**Selection of an Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**”).
- 1.1.4. Shri Chintpurni Sadan, Block-C is located at Talwara Bypass Chowk, just around 1 Km away from the temple shrine. The pilgrims can even walk to reach the temple shrine from the Block-C. The facility is fully constructed property with 34 Rooms and 2 dormitories which can be categorised under deluxe, semi deluxe and family suites. The Block has a parking facility for 11 cars, and the property is adjacent to the general parking facility, where the priority parking can also be provided to the guests staying at Block-C. The approximate land size where the Block is constructed is 1198 square meter and is located. The prime constructed and available facilities in the Block are as follows:



S.No.	Facility	Capacity/Feature	Remarks
1	Restaurant	6-8 Tables	No Furniture
2	Kitchen	Fittings provided	Only space available
3	Drivers' Accommodation	4 Beds	No Furniture
4	Lifts	2 lifts	Installed
5	Bedrooms – 1 st floor	10 Rooms	Room Size Around 150 Sqr Ft.
6	Bedrooms – 2 nd floor	14 Rooms	Room Size Around 150 Sqr Ft.
7	Bedrooms – 3 rd floor	12 Rooms	150 sqr ft. Rooms and 2 Family Suites
8	Dormitory – 2 nd Floor	2 Rooms	For 8 persons per dormitory
9	Parking	11 Cars	Parking facility available in other blocks can be used by the guests
Ancillary facilities			
A	Generator	-	Common Generator for A,B,C Blocks
B	Transformer	-	Common for A,B,C Blocks
C	Sewage treatment Plant	-	Common for all A,B,C Blocks

Some photographs of the said Block-C are attached with this RFP at **Annexure 'B'**.

- 1.1.5. HPIDB seek bids through the present RFP from interested and eligible entities (the **"Bidder"** which expression shall, unless repugnant to the context, include the Members of the Joint Venture also) for selection of a private player to whom the Project may be awarded through an open competitive bidding process in accordance with the procedure set out herein (the **"Selected Bidder"**) and who shall thereafter undertake the Project in accordance with the terms of this RFP including the Agreement to be executed with the Authority.
- 1.1.6. In case the Selected Bidder is an unincorporated Joint Venture, then it shall be required to be registered as an incorporated Joint Venture under the applicable statutory law either as a company or a partnership firm or LLP prior to execution of the agreement with the Authority.
- 1.1.7. As a part of the Bidding Documents, HPIDB has provided a form of agreement proposed to be executed between the Selected Bidder (the **"Operator"**) and the Authority (the **"Concession Agreement"** – Vol.II of RFP document). The Concession Agreement sets forth the detailed terms and conditions for the grant of concession to the Operator, including the scope of the Operator's services and obligations (the **"Concession"**). The period of Concession is 10 (Ten) years (the **"Concession Period"**) which is inclusive of Furnishing Period of 4 (four) months for upgrading, furnishing, equipping and making the existing Block-C fully operational after carrying out Furnishing Works (*as defined in the Concession Agreement*) in accordance with the terms of the Concession Agreement including Schedules thereto and Good Industry Practices, equivalent to atleast 2-star category hotel guidelines issued by the Ministry of Tourism, Govt. of India. The aforesaid Concession Period is



extendable further for a period of 5 (Five) years at the sole discretion of the Authority provided the performance of the Operator is good and he is not in default.

1.1.8. The broad scope of work of the Selected Bidder/ Operator includes (but not limited to):

- (i) the carrying out the Furnishing Works as per the provisions of the Concession Agreement. The Operator shall use new and premium quality materials for furniture, furnishings, fittings & fixtures, etc. equivalent to the standards of a 2 star category hotel or above, as per the guidelines of Ministry of Tourism, Govt. of India;
- (ii) the carrying out of the O&M and other Obligations as specified in this Agreement; and
- (iii) the responsibility for seeking all approvals, licenses, NOCs, insurances, etc. for smooth operations of the Block-C – Hotel and Restaurant. The Operator shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the Vendors for various installations.
- (iv) provide adequate security, watch and ward service at Block-C to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (v) be solely and exclusively responsible for the recruitment, transportation, accommodation, payment of the salaries, wages, allowances and other payments to its employees and cost incidental thereto and all taxes, charges, levies, duties payable under the Applicable Laws arising from the respective terms and conditions of employment of its personnel deployed on the Project Facility under or through whatever legal relationship. The Operator shall be further responsible for obtaining all necessary clearance from the Competent Authorities and compliance with all local and other Applicable Laws and regulations pertaining to the employment of labour. The Operator shall ensure that all labour laws, rules and regulations are followed and that the Operator shall be the primary employer of the staff, personnel, labour employed by it or by its Sub-Contractor(s) on the Project without any liability of the Authority;
- (vi) shall neither undertake nor permit the Users and visitors to the Project Facility to undertake any of the Prohibited Activities as specified in the Concession Agreement;
- (vii) not make any changes in the structure, facade of Block-C while undertaking Furnishing Works or during O&M Period without the prior written approval of the Authority. The Operator shall have the option to make changes within the existing structures/ floors with good quality furnishing materials, while maintaining the aesthetics of the Site;



- (viii) hand over the Project Facility in operational and good condition on the date of termination of Concession to the Authority, in accordance with the provisions thereof.

For detailed scope of work, terms & conditions, the Bidders are advised to peruse through the form of Concession Agreement provided with this RFP. For day to day co-ordination, the Authority shall designate either the Temple Officer or any other officer of the Temple Trust Mata Shri Chintpurni, as the Nodal Officer.

- 1.1.9. In consideration of the scope of work and services undertaken by the Operator, it shall be entitled to demand, levy, collect, enforce, retain and appropriate User Charge (*as defined in the Concession Agreement*) from all the Users using the Facility including room tariff, Food & Beverage, operations of other facilities at the Chintpurni Sadan Block-C, at rates determined by the Operator, in accordance with the provisions of the Concession Agreement and the Schedules thereof. At the end of the Concession Period or premature termination thereof for any reason, the Operator shall transfer the Project Site and the Project developed thereon with all the fixtures, furniture and assets permanently attached to it in good and running condition, back to the Authority or its nominated agency, vacant and free of all encumbrances, without any obligation of the Authority to make any payment in respect thereof.
- 1.1.10. In consideration of the rights, privileges and interest granted by the Authority to the Selected Bidder/ Operator in terms of the Bidding Documents particularly the Concession Agreement, the Operator shall pay to the Authority an annual fee of a fixed amount (the “**Annual Concession Fee**”) (to be quoted by the Bidders and accepted by HPIDB) payable annually starting from the Commercial Operations Date (*as specified in the Concession Agreement*) or 1st day of the 5th month from the Effective Date (*as defined in the Concession Agreement*) whichever is earlier. The Selected Bidder shall also be liable to make payment of all taxes, levies etc. as may be applicable on the Annual Concession Fee whether payable by the Authority or the Operator. The Annual Concession Fee shall escalate at the rate of 5% (five percent) annually over the previous value of Annual Concession Fee every year.
- 1.1.11. The statements and explanations contained in this RFP are intended to provide understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or modify this RFP and the Agreement prior to Bid Due Date. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.



- 1.1.12. HPIDB shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by HPIDB pursuant to this RFP, as modified, altered, amended and clarified from time to time by HPIDB (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 of the RFP for submission of Bid (the “**Bid Due Date**”).

1.2. BRIEF DESCRIPTION OF BIDDING PROCESS

- 1.2.1 HPIDB has adopted single stage two-step open competitive bidding process (referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The Bidding Process shall be carried out in accordance with procedure set out in this RFP document. All Bidders shall submit their respective Technical Bid and Financial Bid against this RFP document in a single stage. The first step of the process involves qualification of interested Parties/ Consortia on the basis of the Technical Bid submitted by the Bidders in accordance with the provisions of this RFP document; at the end of the first step, the HPIDB shall shortlist pre-qualified Bidders (the “**Qualification Phase**”). In the second step of the process, Financial Bid of only these shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Selected Bidder (the “**Financial Bid Phase**”).
- 1.2.2 The Bid shall be valid for a period of not less than 120 (One Hundred and Twenty) days from the Bid Due Date as specified in Clause 1.3. The Bids must be submitted at the office of HPIDB, Shimla in the manner as set out in this RFP document.
- 1.2.3 The Bidding Documents include the Concession Agreement and its Schedules for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4 This RFP document has been made available on the website i.e. <http://himachalservices.nic.in/hpidb/> and can also be purchased directly from the office of HPIDB. Bid Document Fee for an amount of **Rs.11,800/- (Rupees Eleven Thousand and Eight Hundred only)** inclusive of GST, shall be paid. If downloaded from the said website then the Demand Draft for the said amount towards Bid Document Fee shall be submitted as a part of the Bid and if purchased directly from the office of HPIDB, then the payment shall be made directly to HPIDB through Demand Draft and receipt in respect thereof issued by HPIDB shall be enclosed in the Bid. The said Demand Draft shall be drawn on a Scheduled Bank in India in favour of “**Himachal Pradesh Infrastructure Development Board**” payable at Shimla, Himachal Pradesh, in a manner, prescribed in this RFP document.



- 1.2.5 In the Qualification Phase, Bidders would be required to furnish all the information as specified in this RFP and other documents to be provided by HPIDB. Only those Bidders that are pre-qualified and short-listed by HPIDB shall be eligible for the Financial Bid Phase.
- 1.2.6 In the Financial Bid Phase, the financial offer (the “**Financial Bid**”) submitted by the qualified Bidders will be evaluated. The Financial Bid shall be submitted by the Bidder as hard copy (Appendix-V) as per Clause 2.12 and 2.13.
- 1.2.7 A Bidder is required to deposit, along with its Bid, a Bid Security of **Rs.2,00,000/- (Rupees Two Lakhs Only)** (the “**Bid Security**”), refundable not later than 120 (One Hundred and Twenty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a Demand Draft or a Bank Guarantee acceptable to the HPIDB. If Bid Security is provided in the form of Bank Guarantee then the same shall be valid for a period not less than 180 (One Hundred and Eighty) days from the Bid Due Date. The validity of Bid Security may be extended as may be mutually agreed between the HPIDB and the Bidder from time to time. Where Bid Security is being furnished by way of Demand Draft, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by HPIDB. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The format for the bank guarantee has been given in Appendix-VI.
- 1.2.8 Bids are invited for the Project on the basis of the highest Annual Concession Fee that will be offered to the Authority for the award of the Concession.
- 1.2.9 The Annual Concession Fee amount shall constitute the sole criteria for evaluation of Financial Bids. In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Annual Concession Fee.
- 1.2.10 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not Selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, HPIDB, in its discretion & in consultation with the Authority may annul the Bidding Process or invite fresh Bids through Re-bidding of the Project, as the case may be.
- 1.2.11 Any queries or request for additional information concerning this RFP or the Project shall be submitted in writing to the address of HPIDB, or by fax on the number: 0177-2627696 and by e-mail on hpdb-hp@nic.in addressed to the **General Manager, Himachal Pradesh Infrastructure Development Board**. The email



subject line and envelopes/ communication shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: RFP for Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode”.

- 1.2.12 The Bidders are advised to visit the Project Site by themselves before submitting their Bid. For making site visit, they are requested to contact the **General Manager, Himachal Pradesh Infrastructure Development Board**. The cost of the visit shall be borne by the Bidders only.

1.3 SCHEDULE OF BIDDING PROCESS

The Authority and/or HPIDB shall endeavor to adhere to the following schedule:

Event Description	Date
Availability of RFP	21.08.2021 from 10:00 A.M. IST on the portal: http://himachalservices.nic.in/hpidb/
Last date for receiving queries	06.09.2021 by email on hpidb-hp@nic.in or by post to the General Manager, HPIDB at the address of HPIDB mentioned in this RFP
Pre – Bid meeting/ conference	07.09.2021 at 3.00 P.M. IST at HPIDB, Himland, Shimla, Himachal Pradesh or online through Video Conferencing. <i>(must share your details by email before pre-bid meeting, if wish to join by Video Conference)</i>
Date for response to Pre-Bid queries	14.09.2021 on the portal: http://himachalservices.nic.in/hpidb/
Bid Due Date Bids to be submitted physically to : The General Manager, Himachal Pradesh Infrastructure Development Board, New Himrus Building, Himland, Shimla – 171 001	05.10.2021 till 04:00 P.M. IST
Date & Time of opening of Technical Bids	05.10.2021 at 04:30 P.M. IST in the office of HPIDB, Shimla, Himachal Pradesh or through Video Conferencing <i>(details will be provided later on the portal)</i>
Date & Time of opening of Financial Bids	To be notified subsequently to technically shortlisted Bidders.
Notice of Award (NOA)	To be notified separately.

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



Validity of Bids	120 days of Bid Due Date.
Submission of Performance Security	Within 21(twenty one) days from the date of issuance of NOA.
Signing of Agreement	Within 30 (thirty) working days of date of NOA.

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 SCOPE OF BIDS

- 2.1.1 HPIDB intends to receive Bids to pre-qualify and short-list suitable Bidders, whose Bids shall be eligible for opening in the Financial Bid Phase and selection of the preferred Bidder/ Selected Bidder pursuant thereto.

2.2 ELIGIBILITY OF BIDDERS

- 2.2.1 For determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (i) The Bidder may be a single entity or a group of entities (the **“Joint Venture”**), joining together to implement the Project. However, no Bidder applying individually or as a member of a Joint Venture, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and the Joint Venture.
- (ii) A Bidder may be a natural person, Sole Proprietorship, Partnership firm, LLP under the Limited Liability Partnership Act, 2008 or a Company (Public or Private Ltd.) incorporated under the Companies Act 1956/2013 or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Joint Venture.
- (iii) A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 herein below.
- (iv) A Bidder shall not have a conflict of interest (the **“Conflict of Interest”**) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (a) The Bidder and any other Bidder have common controlling shareholders/ partners or other ownership interest; provided however, in case of a company duly incorporated under the provisions of the

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Companies Act, 2013, this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder (or any shareholder thereof having a shareholder of more than 10% (ten percent) of the paid up and subscribed share capital of such Bidder in the other Bidder is less than 10% (ten percent) of the subscribed and paid-up equity share capital thereof. In any other form of entity, other than a company, this disqualification shall not apply to in cases when the controlling interest of the Bidder in the other Bidder is less than 10% either in form of partnership or voting rights or in any other form as per the applicable law under which such entity has been formed/registered or incorporated; or

- (b) a constituent of such Bidder is also a constituent of another Bidder; or
 - (c) such Bidder, or its Member receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder or its Member or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or its Member; or
 - (d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - (e) such Bidder or any of its Member has a relationship with another Bidder or its Member, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; or
 - (f) Such Bidder or any of its Members has participated as a consultant to HPIDB in the preparation of any documents, design or technical specifications of the Project.
- (v) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of HPIDB or the Authority in relation to the Project is engaged by the Bidder or its Member, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (a) issue of the LOA or (b) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or the Operator, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of HPIDB and/ or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which HPIDB or the Authority may have there under or otherwise, the LOA or the



Concession Agreement, as the case may be, shall be liable to be terminated without HPIDB or the Authority being liable in any manner whatsoever to the Selected Bidder or the Operator for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or its Member in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the Concession Agreement.

Explanation:

In case a Bidder is a Joint Venture, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Joint Venture.

2.2.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfill the following conditions of eligibility (the “**Minimum Eligibility Criteria**”):

(A) **Technical Capacity:** For demonstrating technical capacity and experience, the Bidder in the past 5 (five) years preceding the Bid Due Date should possess experience of having executed the following Eligible Projects :

- (i) Developed operated and maintained **OR** operated, managed and maintained atleast 1 (one) hotel/ resort with minimum 20 rooms having facilities and service levels equivalent to 2 star or above category hotel guidelines issued by the Ministry of Tourism, Govt. of India. Such hotel/ resort should have been operated, managed and maintained by the Bidder for more than 1 (one) year prior to the Bid Due Date; or
- (ii) operated and maintained hospitality/ tourism sector projects* for a continuous period of atleast 3 years prior to the Bid Due Date.

** hospitality/ tourism sector projects mean restaurants, food courts, amusement parks, theme parks, malls, banquet halls and convention centres.*

Note:

- ❖ *The projects which were developed and completed by the Bidder during the period prior to last 5 years preceding Bid Due Date but the same is being operated and managed by the Bidder continuously during the last 5 years will be considered as eligible projects.*
- ❖ *The experience of operation and maintenance is a mandatory requirement for qualification.*

In case of a Joint Venture, the combined Technical Capacity of both the Members would be collectively considered for evaluation.



- (B) **Financial Capacity:** For demonstrating financial capacity, the Bidder shall have :
- (i) **Minimum Net Worth** of Rs.3 crores (Rupees Three Crores) at the close of the financial year preceding the Bid Due Date;
 - (ii) **Positive Cash Flows** for any 3 out of the last 5 Financial Years.

In case of a Joint Venture, the Financial Capacity criteria at Clause 2.2.2(B)(i) above may either be satisfied by the Lead Member individually or by both Members of the JV collectively in which case the Lead Member must essentially meet atleast 51% of the Net worth criteria. Further, in case of a Joint Venture, the Financial Capacity criteria at Clause 2.2.2 (B)(ii) above is essentially required to be satisfied either by the Lead Member individually or by the co-member individually.

2.2.3 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- (i) Certificate(s) from its statutory auditors/ practicing Chartered Accountant or from the concerned client(s) certifying the development, operation & maintenance or operation, management & maintenance (*as the case may be*) of Eligible Projects by the Bidder, whose experience is being claimed by the Bidder, along with any other relevant documents to support the claim of the Bidder, as per Clause 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Joint Venture), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor/practicing Chartered Accountant;
- (ii) Duly filled in (Yes/No), signed & stamped checklist appended at Annexure-A to this RFP document¹; and
- (iii) Certificate(s) from its statutory auditors /practicing Chartered Accountant specifying the : (i) Net Worth of the Bidder, as at the close of the preceding financial year from the Bid Due Date and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.3(ii); and (ii) Net Cash Flows over last 5 (five) Financial Years, as per Clause 2.2.2 (B) above.

For the purposes of this RFP, Net Worth shall mean:

- i **In case of a company:** the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after

¹ Applicable only in respect of Eligible Project under Clause 2.2.2(A)(i).

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deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation; and

- ii **In case of any other entity/body corporate:** the aggregate value of the paid up capital and reserves of such entity, after deducting the aggregate value of the intangible assets.
- iii **In case of individual/ sole proprietor:** Total value of assets, after deducting the liabilities.

2.2.4 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder. In the case of a Joint Venture, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III. If the Bid is submitted by the proprietor then, no POA is required. However, he/ she will submit an undertaking certifying that he/ she is sole proprietor. If the Bid is submitted by person other than proprietor, POA authorizing the person to submit bid on behalf of the concern shall be enclosed with the bid. An international Bidder bidding individually or as a member of a Joint Venture shall ensure that Power of Attorney is legalised/ apostilled by appropriate authority in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled.

2.2.5 In case the Bidder is a Joint Venture, it shall comply with the following requirements:

- (i) Number of members in a Joint Venture shall not exceed 2 (two);
- (ii) Subject to the provisions of Clause 2.2.5 (i) above, the bid should contain the information required for each member of the Joint Venture;
- (iii) Members of the Joint Venture shall nominate one member as the lead member (the “**Lead Member**”), who shall have a share of at least 51% (fifty one per cent) in the Joint Venture. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Joint Venture. The other member (the “**Other Member**”) of the Joint Venture shall have a minimum share of atleast 26% (twenty six percent) in the JV;
- (iv) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and O&M obligations;
- (v) An individual Bidder cannot at the same time be member of a Joint Venture applying for the Bid. Further, a member of a particular Bidder Joint Venture cannot be member of any other Bidder Joint Venture applying for the Bid;
- (vi) The members of a Joint Venture shall get their JV incorporated and registered as a company or partnership firm or LLP prior to signing of the Concession Agreement for execution of the Project, if awarded to the Joint Venture;



- (vii) Members of the Joint Venture shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
- (a) convey the intent to enter into the Jt. Bidding Agreement and subsequently perform all the obligations of the Developer/ Operator in terms of the Agreement, in case the concession to undertake the Project is awarded to the Joint Venture;
 - (b) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (c) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Agreement and the statement to this effect shall also be included in the Jt. Bidding Agreement and the Agreement;
 - (d) commit that the Lead Member of the Joint Venture shall have a share of at least 51% (fifty one per cent) in the Joint Venture and the Other Member shall have atleast 26% (twenty six per cent) or more share in the JV;
 - (e) both members of the Joint Venture undertake that they shall collectively hold 100% (hundred per cent) share in the incorporated JV at all times until the fifth anniversary of the Commercial Operations Date of the Project and 51% (fifty one percent) thereafter for the balance Concession Period with the Lead Member holding atleast 26%; and
- (viii) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.
- 2.2.6 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any PPP project (Infrastructure or otherwise), and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Joint Venture.
- 2.2.7 A Bidder including any Joint Venture Member should, in the last 3 (Three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Joint Venture Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Joint Venture Member.
- 2.2.8 The following conditions shall be adhered to while submitting a Bid:



- (i) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (ii) information supplied by a Bidder (or other constituent Member if the Bidder is a Joint Venture) must apply to the Bidder or Member named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (iii) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- (iv) in case the Bidder is a Joint Venture, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.9 While Qualification is open to persons from any country subject to Clause 2.2.1, the following provisions shall apply:

- (i) where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (ii) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the eligibility and/ or opening of Financial Bid and/ or award of the Project to such Bidder shall be subject to approval of HPIDB from national security and public interest perspective. The decision of HPIDB in this behalf shall be final and conclusive and binding on the Bidder.

**Note: - Bidders shall be bound to follow the applicable RBI guidelines issued in respect of FDI from time to time. Any violation of such applicable RBI and/or FEMA guidelines shall not in case render HPIDB or the Authority liable in any manner whatsoever.*

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, HPIDB shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.



The Bidder shall promptly inform HPIDB/ Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

- 2.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 3(three) years or 1 (One) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 CHANGE IN COMPOSITION OF THE JOINT VENTURE

- 2.3.1 Change in the composition of a Joint Venture will not be permitted by HPIDB during the Bidding process. Pursuant to award of the Project and the execution of the Agreement, any change in the composition of the Joint Venture/ share of Members in the Joint Venture, shall be strictly in accordance with the provisions of the Concession Agreement.

2.4 NUMBER OF BIDS AND COSTS THEREOF

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Joint Venture shall not be entitled to submit another Bid either individually or as a member of any Joint Venture, as the case may be.
- 2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. HPIDB or the Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 SITE VISIT AND VERIFICATION OF INFORMATION

Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, volume of Users, the condition of existing Block-C, availability of power/ power backup, water and other utilities available, applicable laws and regulations, extent of Furnishing Works required to be undertaken, and any other matter considered relevant by them. The costs of visiting the site, and undertaking any further studies and investigations shall be at Bidder's own expense. The Bidder or any of his personnel or agents will be granted permission to enter upon the Project site for the purpose of such inspection.

2.6 ACKNOWLEDGEMENT BY BIDDER



2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:

- (i) made a complete and careful examination of the RFP;
- (ii) received all relevant information requested from HPIDB;
- (iii) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of HPIDB relating to any of the matters referred to in Clause 2.5 above;
- (iv) agreed to be bound by the undertakings provided by it under and in terms hereof;
- (v) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under; and
- (vi) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. either from HPIDB or the Authority, or a ground for termination of the Concession Agreement by the Operator.

2.6.2 HPIDB and/ or the Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to this RFP or the Bidding Process, including any error or mistake therein or in any information or data given by HPIDB and/ or the Authority.

2.7 RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS

2.7.1 Notwithstanding anything contained in this RFP, HPIDB reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that HPIDB rejects or annuls all the Bids, it may, in its discretion, initiate re-bidding process by inviting fresh Bids for the project. Any such notice shall be uploaded on the website.

2.7.2 HPIDB reserves the right to reject any Bid if:

- (i) at any time, a material misrepresentation is made or uncovered, or
- (ii) the Bidder does not provide, within the time specified by HPIDB, the supplemental information sought by HPIDB for evaluation of the Bid.

If the Bidder is a Joint Venture, then the entire Joint Venture may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then HPIDB reserves the right to:



- (a) invite the remaining Bidders to match the Highest Bidder; or
- (b) take any such measure as may be deemed fit in the sole discretion of HPIDB, including annulment of the Bidding Process.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/ Operator has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by HPIDB or the Authority to the Bidder, without HPIDB or the Authority being liable in any manner whatsoever to the Bidder. In such an event, HPIDB or the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy which HPIDB and/ or the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.
- 2.7.4 HPIDB reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by HPIDB shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of HPIDB and/ or the Authority thereunder.
- 2.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.7.6 The documents including this RFP and all attached documents, provided by HPIDB are and shall remain or become the properties of HPIDB and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.7.6 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and HPIDB will not return to the Bidders any Bid, document or any information provided along therewith.

2.8 CLARIFICATIONS

- 2.8.1 Bidders requiring any clarification on this RFP may notify the HPIDB in writing or by fax and e-mail in accordance with Clause 1.2.11. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3.



The HPIDB shall endeavour to respond to the queries within the period specified therein, but no later than 15 (Fifteen) days prior to the Bid Due Date. The responses will be uploaded on the website <http://himachalservices.nic.in/hpidb/> without identifying the source of queries.

- 2.8.2 The HPIDB shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, HPIDB reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring the HPIDB to respond to any question or to provide any clarification.
- 2.8.3 The HPIDB may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the HPIDB shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by HPIDB or its employees or representatives shall not in any way or manner be binding on the HPIDB.

2.9 AMENDMENT/ MODIFICATION OF BIDDING DOCUMENTS

- 2.9.1 At any time prior to the deadline for submission of Bids, the HPIDB may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the Bidding Documents by the issuance of Addenda.
- 2.9.2 Any Addendum/ Corrigendum thus issued will be uploaded on the website <http://himachalservices.nic.in/hpidb/> only. Therefore, the Bidders are advised to keep checking the above-stated website for any such Addendum/ Corrigendum.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum/ Corrigendum into account, or for any other reason, the HPIDB may, at its own discretion, extend the Bid Due Date.

B. PREPARATION AND SUBMISSION OF BIDS

2.10 LANGUAGE

- 2.10.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered HPIDB for evaluation. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.



2.11 FORMAT AND SIGNING OF BID

- 2.11.1 The Bidders shall provide all the information sought under this RFP. The HPIDB will evaluate only those Bids that are received in the required formats and complete in all respects by the Bid Due Date. Incomplete and/ or non-responsive Bids shall be liable for rejection.
- 2.11.2 The Bidder shall prepare 1 (one) original set (hard copy) of the Technical Bid (together with originals/ copies of documents required to be submitted along therewith pursuant to this RFP) which shall be typed or written in indelible ink and physically signed on each page in blue ink by the authorized signatory of the Bidder and clearly marked “ORIGINAL”. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall also be initialed by the authorized signatory signing the Bid. The Bid shall contain page numbers in serial order and shall be hard bound.
- 2.11.3 In addition, the Bidder shall submit 1 (one) copy of the Bid, along with documents required to be submitted along therewith pursuant to this RFP, marked “COPY”. In the event of any discrepancy between the original and the copy, the original shall prevail.

2.12 SEALING AND MARKING OF BIDS

- 2.12.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.12.2(A) and seal it in an envelope and mark the envelope as “**Technical Bid**”. The Bidder shall submit the Financial Bid in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”. The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.12.3 and 2.12.4.
- 2.12.2 (A) Each Technical Bid envelope shall contain:
- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents and duly filled-in checklist as per Annexure-A;
 - (ii) Power of Attorney for signing the Bid as per the format at Appendix-II;
 - (iii) if applicable, the Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-III;



- (iv) if applicable, the Jt. Bidding Agreement, in case of a Joint Venture, substantially in the format at Appendix-IV;
 - (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its Partnership Deed;
 - (vi) copies of Bidder's duly audited balance sheets and profit and loss account for the preceding five years;
 - (vii) Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.4;
 - (viii) Bid Security as specified in Clause 2.21;
 - (ix) GST Registration Certificate, documents of incorporation/ registration documents, recent EPF Registration Certificate (which is valid beyond Bid Due Date);
 - (x) a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum/ Corrigendum (if any) with each page stamped and initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in sub-clause (ii) hereinabove.
- (B) Each Financial Bid envelope shall contain:
Financial Bid in the prescribed format (Appendix-V).

2.12.3 The final outer envelopes having the Original and Copy, shall clearly bear the following identification:

Bid for “Selection of an Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode”.

and shall clearly indicate the name and address of the Bidder along with the contact person's name, mobile number & email address. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.12.4 Each of the envelopes shall be addressed to:

ATTN. OF: The General Manager,
Himachal Pradesh Infrastructure Development Board
ADDRESS: New Himrus Building, Himland, Circular Road,
Shimla, Himachal Pradesh.
EMAIL: hpidb-hp@nic.in
TEL: 0177-2626696, 2627312
FAX: +91 0177-2627696

2.12.5 If the envelopes are not sealed and marked as instructed above, the HPIDB assumes no responsibility for the misplacement or premature opening of the contents of the



Bid submitted. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.13 SUBMISSION OF THE BID

- (i) Hardcopy of the Bid should be submitted before 4:00 P.M. IST on or before the Bid Due Date at the above mentioned address.
- (ii) The Bidder shall submit the Hardcopy of the Bid in the format specified at Appendix-I, together with the documents specified in Clause 2.12.2 (A) and seal it in an envelope and mark the envelope as “**Technical Bid**”.
- (iii) The Demand Draft or Bank Guarantee in original towards the payment of the Bid Security shall be put in a separate envelope inside the Technical Bid envelope and mark the envelope as “**Bid Security**”.
- (iv) The Bidder shall submit the Financial Bid in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”.
- (v) Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”.
- (vi) The Bidder shall seal the original and the copies of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”.
- (vii) The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Clauses 2.12.3 and 2.12.4.

2.14 BID DUE DATE

- 2.14.1. Bids should be submitted before 4:00 P.M. IST on the Bid Due Date at the address provided herein in the manner and form as detailed in this RFP. A receipt thereof should be obtained from HPIDB.
- 2.14.2. The HPIDB may, in its sole discretion, extend the Bid Due Date by issuing an Addendum/ Corrigendum only on its website <http://himachalservices.nic.in/hpidb>.

2.15 LATE BIDS

- 2.15.1 Bids received by the HPIDB after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 CONTENTS OF THE FINANCIAL BID



- 2.16.1. The Financial Bid shall be furnished in the format at Appendix – V and shall consist of Annual Concession Fee to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Annual Concession Fee offered by it to the Authority as consideration for the concession granted in respect of the Project in accordance with this RFP and the provision of the Concession Agreement.
- 2.16.2. The Project will be awarded to the Bidder quoting the highest Annual Concession Fee.

2.17 MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS

- 2.17.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the HPIDB prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.17.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.17.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the HPIDB, shall be disregarded.

2.18 VALIDITY OF BIDS

- 2.18.1 The Bids shall be valid for a period of not less than 120 (One Hundred and Twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the HPIDB. Accordingly, the validity of Bank Guarantee for Bid Security shall also be extended by the Bidder.

2.19 CONFIDENTIALITY

- 2.19.1 All of the information relating to the examination, clarification, evaluation and recommendation for the Bidders is confidential and shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the HPIDB in relation to, or matters arising out of, or concerning the Bidding Process. The HPIDB will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The HPIDB may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the HPIDB. All documents and other information supplied by HPIDB or submitted by a Bidder to HPIDB shall remain or become the property



of HPIDB. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. HPIDB will not return any Bid or any information provided along therewith.

2.20 CORRESPONDENCE WITH THE BIDDER

2.20.1 Save and except provided in this RFP, the HPIDB shall not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

C. BID SECURITY

2.21 BID SECURITY

2.21.1 The Bidder/ Lead Partner of the Joint Venture shall furnish as part of its Bid, a Bid Security of Rs.2,00,000/- (Rupees Two Lakhs Only) in the form of an unconditional and irrevocable Bank Guarantee issued by a Nationalized/ Scheduled Bank in India in favour of the **“Himachal Pradesh Infrastructure Development Board”** and payable at Shimla, Himachal Pradesh, in the format at Appendix – VI (the **“Bank Guarantee”**) and having a validity period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date, which may be extended as may be mutually agreed between the HPIDB and the Bidder from time to time. HPIDB shall not be liable to pay any interest on the Bid Security so submitted and the same shall be interest free.

2.21.2 Bid Security can also be in the form of a Demand Draft issued by a Scheduled Bank in India, drawn in favour of the **“Himachal Pradesh Infrastructure Development Board”** from a Nationalized/ Scheduled Bank in India and payable at Shimla, Himachal Pradesh. Where a Demand Draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by HPIDB. The Authority and/or the HPIDB shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.21.3 Any Bid not accompanied by the Bid Security shall be rejected by the HPIDB as non-responsive.

2.21.4 Save as provided in Clauses 2.21.6 and 2.21.7 below, the Bid Security of unsuccessful Bidders will be returned by the HPIDB, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the HPIDB. Where Bid Security has been provided by deposit of Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft/ Cheque in favour of the unsuccessful Bidder(s) or by way of electronic transfer of the amount into the account of the unsuccessful Bidder, as per the details provided for the same by the Bidder.



- 2.21.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Selected Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 2.21.6 The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the HPIDB shall be entitled to forfeit and appropriate the Bid Security as compensation/ damages to the HPIDB in any of the events specified herein below.
- 2.21.7 The Bid Security shall be forfeited and appropriated by the HPIDB as compensation and damages payable to the HPIDB for, inter alia, time, cost and effort of the HPIDB without prejudice to any other right or remedy that may be available to the HPIDB hereunder or otherwise, under the following conditions:
- (i) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
 - (ii) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
 - (iii) In the case of Selected Bidder, if it fails within the specified time limit –
 - (a) to sign and return the duplicate copy of NOA;
 - (b) to sign the Concession Agreement within the stipulated time limit or extended time limit which may be granted by HPIDB at its sole discretion; and/or
 - (c) to furnish the Performance Security within 21 (twenty one) days from the date of issuance of Notice of Award.
 - (iv) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1 TESTS OF RESPONSIVENESS

- 3.1.1 Prior to evaluation of Bids, the HPIDB shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive only if:
- (i) Technical Bid is received as specified in Clause 2.12.2(A);
 - (ii) It is received by the Bid Due Date including any extension thereof pursuant to Clause 1.3;
 - (iii) It is signed, sealed, hard bound and marked as stipulated in Clauses 2.11 and 2.12;



- (iv) It is accompanied by the Bid Security as specified in Clause 2.21;
- (v) It is accompanied by the Power(s) of Attorney as specified in Clause 2.2.4;
- (vi) It contains all the information (complete in all respects) as requested in this RFP and/ or Bidding Documents (in formats same as those specified);
- (vii) If applicable, it is accompanied by the Jt. Bidding Agreement (for Joint Venture), specific to the Project, as stipulated in Clause 2.2.5 (vii);
- (viii) It is accompanied by the Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Clause 1.2.4;
- (ix) It contains a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum/ Corrigendum (if any) with each page stamped and initialed by the person signing the Bid;
- (x) It does not contain any condition or qualification; and
- (xi) It is not non-responsive in terms hereof.

HPIDB reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by HPIDB in respect of such Bid.

3.2 OPENING AND EVALUATION OF BIDS

- 3.2.1 HPIDB shall open the Technical Bids *at 4:30 P.M. IST* on the Bid Due Date, at the office of HPIDB and in the presence of the Bidders who choose to attend. However, HPIDB reserves the right to change the time of opening of bid in case of any exigency. Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.17.1 shall not be opened.
- 3.2.2 A list of the Bidders or their representatives attending the opening of Bids shall be prepared and their signatures shall be obtained on the same (no signatures shall be obtained if the Bid Opening is done through Video Conferencing). The HPIDB shall open Financial Bids of only those Bidders who meet the eligibility criteria specified in this RFP at such date and time as intimated by the HPIDB.
- 3.2.3 The HPIDB will subsequently examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.2.4 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the HPIDB may, in its sole discretion, seek clarifications/ information in writing from any Bidder regarding its Bid. Any clarification submitted by a Bidder with regard to its Bid that is not in response to a request by HPIDB shall not be considered.
- 3.2.5 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the HPIDB as incorrect or erroneous, the HPIDB shall reject such claim and exclude the same from evaluation. Where any information is found to be



patently false or amounting to a material misrepresentation, the HPIDB reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3 and also debar the Bidder from future tenders of HPIDB.

- 3.2.6 Bidders are advised that qualification of Bidders will be entirely at the discretion of HPIDB. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

3.3 EVALUATION OF TECHNICAL BID

- 3.3.1 The Bidder's competence and capability shall be evaluated on the basis of the following parameters:

- (i) Technical Capacity; and
- (ii) Financial Capacity.

3.4 TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION

- 3.4.1 The Bidders would have to meet the minimum Technical Capacity as defined in Clause 2.2.2 (A) to qualify for the Financial Bid stage.
- 3.4.2 The Bidder should provide necessary information in relation to Eligible Projects as per the format at Annex-II of Appendix-I along with evidence in support of claim of Technical Capacity in the form of certificates from statutory auditor/ chartered accountant in support thereof as proof. Additionally, for Eligible Project(s) whose experience is being claimed by the Bidder under Clause 2.2.2(A)(i) shall be mandatorily required to submit a duly filled in Checklist as per Annexure-A of this RFP.
- 3.4.3 Annexure-A is the ***“Checklist of Facilities for Classification/ Re-Classification of Operational Hotels issued by MOT, Govt. of India”***. There is no relaxation in the ‘**Necessary**’ criteria of the said Checklist; for the purpose of qualification, each Eligible Project whose experience is being claimed by the Bidder should essentially comply with all the **Necessary (N)** Services and Facilities of the said Checklist, except to the extent as specified in the comments column of the Checklist; and each such Eligible Project should also meet atleast **50% (fifty percent)** of the **Desirable (D)** Services and Facilities of the said checklist.
- 3.4.5 Experience for any activity relating to an Eligible Project shall not be claimed by the Members of the Joint Venture. In other words, no double counting by a Joint Venture in respect of the same experience shall be permitted in any manner whatsoever.

3.5 FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION

- 3.5.1 The Bid must be accompanied by the Audited Balance Sheets, Financial Statements and Annual Reports, Profit & Loss statements, ITRs of the Bidder (of each Member *Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.*



in case of a Joint Venture), for the last 5 (five) financial years, preceding the Bid Due Date.

- 3.5.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor/ chartered accountant shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports/ audited Balance Sheets/ audited Income Tax Returns/ Profit & Loss Account, for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.5.3 The Bidder must establish minimum Net Worth and positive Cash Flows as specified in Clause 2.2.2 (B), and provide details as per format at Annex-III of **Appendix-I**.

3.6 QUALIFICATION AND SHORTLISTING OF BIDDERS

- 3.6.1 In the first step of evaluation, Technical Bids of Bidders adjudged responsive in terms of Clause 3.1.1 shall be considered for Technical evaluation as per Clauses 2.2 and 3.4 of this RFP. The Bidders qualifying as per the conditions shall be shortlisted as pre-qualified Bidders and shall be considered for the next step of evaluation.
- 3.6.2 In the Qualification Phase, the information, documents and credentials submitted by the Bidder as a part of its Bid shall be evaluated and measured in terms of its Eligible Experience to determine the technical and financial competency/ capability of the Bidder (of all Members in case of a Joint Venture) vis-à-vis the requirements of Clauses 2.2.1, 2.2.2, 2.2.3, 3.4 and 3.5 of this RFP.
- 3.6.3 The Bidder who meets the eligibility criteria set forth in Clauses 2.2.1 to 2.2.3 and 3.4 in terms of eligible experience in respect of Eligible Projects and Financial Capacity in terms of Clauses 2.2.2, 2.2.3 and 3.5 under this RFP document, will be shortlisted and eligible for the Financial Bid Phase.
- 3.6.4 The Bidders who are shortlisted as per Clauses 3.6.2 & 3.6.3 above will be informed about the opening date of the Financial Bid on the website/ email to the shortlisted bidders and the Financial Bid shall be opened in the presence of the shortlisted Bidders who choose to attend.

3.7 OPENING AND EVALUATION OF FINANCIAL BID

- 3.7.1 The Bidders who are shortlisted as per Clause 3.6 will be informed about the opening date of the Financial Bid on the website i.e. <http://himachalservices.nic.in/hpidb/> by email; and the Financial Bid shall be opened in the presence of the shortlisted Bidders who choose to attend.
- 3.7.2 To facilitate evaluation of Bids, HPIDB may, at its sole discretion, seek clarifications



in writing from any Bidder regarding its Bid.

3.8 SELECTION OF SELECTED BIDDER

- 3.8.1 Subject to the provisions of Clause 3.6, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1 and who quotes the Highest Annual Concession Fee offered to the Authority shall be declared as successful (the “**Selected Bidder**”).
- 3.8.2 In the event that two or more Bidders quote the same amount of Annual Concession Fee (the “**Tie Bidders**”), HPIDB reserves the right either to:
- invite fresh Bids (i.e. financial quote) from such Tied Bidders;
 - declare as successful such Tied Bidder whose Net Worth has been evaluated to be higher than the other Tied Bidder; or
 - identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tied Bidders, who choose to attend; or
 - take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding Process.
- 3.8.3 In the event that the highest Bidder withdraws or is not selected for any reason in the **first instance** (the “**first round of bidding**”), the HPIDB may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Selected Bidder.
- 3.8.4 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.8.3 above, HPIDB may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.8.5 After selection, a Notice of Award (the “**NOA**”) shall be issued, in duplicate, by the HPIDB to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the NOA, sign and return the duplicate copy of the NOA in



acknowledgement thereof. In the event the duplicate copy of the NOA duly signed by the Selected Bidder is not received by the stipulated date, the HPIDB may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the HPIDB on account of failure of the Selected Bidder to acknowledge the NOA, and the next eligible Bidder may be considered.

3.8.6 After acknowledgement of the NOA as aforesaid by the Selected Bidder, the Selected Bidder must satisfy the following conditions:

- (i) Submit Performance Security to the Authority; and
- (ii) In case the Selected Bidder is a JV, then the JV shall corporate and get itself registered either as a company under the Companies Act, 2013 or partnership under the Partnership Act or LLP under the Limited Liability Act, to act as the Operator who shall sign the Concession Agreement with the Authority.

The Authority shall not execute the Concession Agreement until the above mentioned conditions are satisfied.

3.8.7 **Performance Security** : The Selected Bidder shall furnish to the Authority, Performance Security, in the form of a an irrevocable and unconditional Bank Guarantee issued by a Scheduled Bank in India, drawn in favour of the Commissioner (Temple), Temple Trust Mata Shri Chintpurni Ji and payable at Una for due and faithful performance of its obligations, for a value of **Rs.50,00,000/-** (Rupees Fifty Lakhs Only), within 30 days of the issue of Letter of Award (LOA). This Bank Guarantee shall be returned to the Selected Bidder after 90 (ninety) days after Transfer Date. In case of breach of any of the provisions of the contract by the Selected Bidder/ Operator, the Authority shall revoke the Performance Bank Guarantee to apportion the losses on account of such breach. The Selected Bidder/ Operator shall have to replenish the Bank Guarantee after such apportionment to its original value (in case of partial appropriation) or furnish a new Bank Guarantee of same value (in case of total appropriation), as the case may be.

3.9 CONTACTS DURING BID EVALUATION

3.9.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the HPIDB makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, the HPIDB and/ or their employees/ representatives on matters related to the Bids under consideration.



4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the NOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the NOA or the Concession Agreement, the HPIDB and/or the Authority shall reject a Bid, withdraw the NOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Developer/ Operator, as the case may be, if it determines that the Bidder or Developer/ Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, unfair practices, undesirable practice or restrictive practice in the Bidding Process. In such an event, the HPIDB and/or the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the HPIDB and/or the Authority towards, inter alia, time, cost and effort of the HPIDB and/or the Authority, without prejudice to any other right or remedy that may be available to the HPIDB and/or the Authority hereunder or otherwise.
- 4.2 Without prejudice to the rights of the HPIDB and/or the Authority under Clause 4.1 hereinabove and the rights and remedies which the HPIDB and/ or the Authority may have under the NOA or the Concession Agreement, if a Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the NOA or the execution of the Agreement, such Bidder or Operator shall not be eligible to participate in any tender or RFP issued by the HPIDB and/or the Authority during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4 the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) 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 HPIDB and/ or the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the NOA or has dealt with matters concerning the Concession Agreement



or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the HPIDB and/ or the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the NOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the NOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the HPIDB and/ or the Authority in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“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;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the HPIDB and/ or the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.
- (f) **“unfair practice means”** a practice which, for the purpose of promoting the sale or promotion etc., adopts any unfair method or unfair or deceptive practice including (A) the practice of making any statement, whether in writing or by visible representation which-(i) falsely represents that the services are of a particular standard or grade; (ii) represents that the Bidder has approval or affiliation which the bidder does not have; (iii) makes a false or misleading representation concerning the services (B) the Bidder permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not offered; (d) the promoter indulges in any fraudulent practices.



5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened either through online mode through Video Conference or physically at Shimla, Himachal Pradesh, depending upon the situation of Covid-19 pandemic in Himachal Pradesh. The address for physical holding of Pre-bid Conference is as follows:

Himachal Pradesh Infrastructure Development Board (HPIDB),
New Himrus Building,
Himland,
Circular Road,
District Shimla,
Himachal Pradesh.

A maximum of two (one Technical and/ or one Financial/Commercial) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

- 5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the HPIDB. HPIDB shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3 The Bidders are advised to attend the Pre-Bid Conference and also to visit the Site in order to get acquainted with the location and layout of the Site and accordingly prepare their Bids.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the applicable laws or other laws of India for the time being in force and the Courts at Shimla shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The HPIDB and/ or the Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (i) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (ii) consult with any Bidder in order to receive clarification or further information;



- (iii) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information or documents, as deemed fit by HPIDB at its sole discretion;
 - (iv) retain any information and/ or evidence submitted to the HPIDB and/ or the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (v) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the HPIDB and/or the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.



APPENDICES

HPIDB WEBSITE 19.08.2021



APPENDIX I
LETTER COMPRISING THE BID
(Refer Clause 2.12.1 and 2.12.2 (A))

Dated:.....

To,
The General Manager,
Himachal Pradesh Infrastructure Development Board,
New Himrus Building,
Himland, Circular Road,
District Shimla,
Himachal Pradesh.

Sub: RFP for “Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode”.

Dear Sir,

- 1) With reference to the RFP document dated², I/we, having examined the RFP document and understood its contents, hereby submit my/ our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
- 2) I/ We acknowledge that the HPIDB will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders, and we certify that all information provided in the Bid and in Annexes I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
- 3) This statement is made for the express purpose of qualifying as a Bidder for the development, operation, maintenance and management of the aforesaid Project.
- 4) I/ We shall make available to the HPIDB any additional information it may find necessary or require to supplement or authenticate the Bid statement.
- 5) I/ We acknowledge the right of the HPIDB to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
- 6) I/ We certify that in the last three years, we/ any of the Joint Venture Members have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
- 7) I/ We declare that:

²All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



- (a) I/ We have examined and have no reservations to the RFP document, including any Addendum/ Corrigendum issued by the HPIDB;
 - (b) I/ We do not have any conflict of interest in accordance with Clause 2.2.1 (iv) of the RFP document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, unfair practices or undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for bid issued by or any agreement entered into with the HPIDB or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 8) I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.7 of the RFP document.
- 9) I/ We believe that we/ our Joint Venture/ proposed Joint Venture satisfy(ies) the Technical Capacity and Financial Capacity criteria and meet all the requirements as specified in the RFP document and are qualified to submit a Bid.
- 10) I/ We declare that we/ any Member of the Joint Venture, are not a Member of any other Joint Venture applying for qualification.
- 11) I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 12) I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 13) I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Joint Venture or against our CEO or any of our Directors/ Partners/ Managers/ employees.
- 14) I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the HPIDB of the same immediately.
- 15) The Statement of Legal Capacity as per format provided at **Annex-IV in Appendix-I** of the RFP document, and duly signed, is enclosed. The Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Joint Venture, as per format provided at **Appendix II and III** respectively of the RFP, are also enclosed.



- 16) I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the HPIDB or the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 17) I/ We agree and undertake to abide by all the terms and conditions of the RFP document including the Concession Agreement and its Schedules.
- 18) In the event of I/ we being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the Draft Concession Agreement prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- 19) I/ We have studied all the Bidding Documents carefully and also surveyed the Project sites. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by HPIDB or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
- 20) I/ We offer a Bid Security of **Rs.2,00,000/-** (Rupees Two Lakhs Only) to HPIDB in accordance with Clause 2.21 of the RFP Document.
- 21) I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project/ Concession is not awarded to me/us or our Bid is not opened or rejected.
- 22) I/ We agree to pay the Annual Concession Fee along with any applicable taxes thereon, in accordance with the terms of the Bidding Documents.
- 23) I/We agree to pay the GST and all other applicable taxes to the Central Government, State Government or Local Authorities of the State of Himachal Pradesh for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
- 24) I/ We have not be not debarred/ blacklisted by the Central/ State Government, or any entity controlled by it, from participating in any project (Infrastructure) or otherwise in the last 3 years, and the bar subsists as on the date of Bid.
- 25) I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
- 26) I/ We hereby declare and confirm that I/ we/ any Member of the Joint Venture is not a defaulter of any Bank or Financial Institution and none of my/ our accounts have been declared as Non-Performing Assets by any Bank or Financial Institution in the last 3 (three) years preceding Bid Due and presently there is no dispute pending with any Bank or Financial Institution.



{We agree and undertake to be jointly and severally liable for all the obligations of the Developer/ Operator under the Concession Agreement till the end of the Agreement Period in accordance with the Agreement.}³

In witness thereof, I/ we submit this bid under and in accordance with the terms of the RFP document.

Yours faithfully,

(Signature, name & designation of the Authorized Signatory)

Name and seal of the Bidder/ Lead Member

Date:

Place:

Note:

Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, or modified as necessary to reflect Bidder-specific particulars.

³ Omit if the Bidder is not a Joint Venture.



Appendix-I
ANNEX-I

DETAILS OF BIDDER

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the registered office, corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the entity including details of its main lines of business and proposed role and responsibility in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the HPIDB:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
5. In case of a Joint Venture:



- (a) The information above (1-4) should be provided for all the Members of the Joint Venture.
- (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.5 (vii) should be attached to the Bid.
- (c) Information regarding the role of each Member should be provided as per table below:

Sr. No.	Name of Member	Role*	Share in Joint Venture
1.			
2.			
3.			

* The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Article 4 at Appendix-IV.

6. The following information shall also be provided for each Bidder/ Member of the Joint Venture:

Name of Bidder/ member of Joint Venture:

Sr. No.	Criteria	Yes	No
1.	Has the Bidder/ member of the Joint Venture been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (OMMT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid.		
3.	Has the Bidder/ member of the Joint Venture paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Bidder and each of the Members of its Joint Venture (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary).

**TECHNICAL CAPACITY OF THE BIDDER***(Refer to Clause 2.2.2 (A) of the RFP)***FORMAT FOR DEVELOPMENT EXPERIENCE OF HOTEL PROJECTS***(refer Clause 2.2.2(A)(i))***Name of Bidder/ Joint Venture Member:**

Project Name and Location	No. of Rooms (atleast 20 rooms)	Whether standards equivalent to 2 star category hotel or above as per guidelines of MoT being followed (Yes/No) ⁴	Project Cost in INR (not required in case the Bidder is not the developer of the Project)	Date of commencement of operations & maintenance by the Bidder	Proof of No. of Rooms and Completion Enclosed (Yes/No)

Note:

1. Provide details of only those Projects that have been undertaken by the Bidder under its own name and/ or by a Joint Venture Member in case of Joint Venture. The projects cited must comply with the Technical Capacity specified in Clause 2.2.2(A)(i) of the RFP document.
2. The date of commencement of operations and number of years/ months of operation & maintenance of the project as on the Bid Due Date needs to be certified by the Statutory Auditor/ Chartered Accountant of the Bidder.
3. Each Bidder to submit duly filled (Yes/No) checklist for certifying experience of the standards equivalent to 2-star or above hotel guidelines at Eligible Project appended as **Annexure-A** to this RFP document. This is a mandatory requirement.
4. This certificate to be provided on the letter-head of the Statutory Auditor/Chartered Accountant of the Bidder/ Member of the JV.

Format 1 for Eligible Projects developed, operated and maintained**Certificate from the Statutory Auditor/ Chartered Accountant⁵**

Based on its books of accounts and other published information authenticated by it, this is to certify that _____ (name of the Bidder/ Member) has developed _____ (name of the Project) located at _____. The Project was commissioned on _____ (Date) and as on Bid Due Date has completed ____ years/ months of

⁴ Bidders to provide mandatory self-declaration as per format appended

⁵ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

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operations.

(Signature of the Authorised Signatory of the Statutory Auditor/ Chartered Accountant)

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN :

Date :

Place

Format 2 for Eligible Projects operated, managed and maintained

Certificate from the Statutory Auditor/ Chartered Accountant

Based on its books of accounts and other published information authenticated by it, this is to certify that _____ (*name of the Project*) located at _____ is being operated, managed and maintained by _____ (*name of the Bidder/ Member*) for the last _____ months/ years as on Bid Due Date.

(Signature of the Authorised Signatory of the Statutory Auditor/ Chartered Accountant)

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN :

Date :

Place

**TECHNICAL CAPACITY OF THE BIDDERcontd.***(Refer to Clause 2.2.2 (A) of the RFP)***FORMAT FOR
DEVELOPMENT AND OPERATIONAL EXPERIENCE OF
ANY TOURISM PROJECT**
(refer Clause 2.2.2(A)(ii))

S. No	Project Name & Location	Nature of Hospitality/ Tourism Sector Project	No. of Rooms (if applicable)	Years of Project Operations as on Bid Due Date ⁶
1.				
2.				

Note:

1. Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by a Joint Venture Member in case of Joint Venture. The projects cited must comply with the Technical Capacity specified in Clause 2.2.2(A)(ii) of the RFP document.
2. The date of commencement of operations and number of years/ months of operation & maintenance of the project as on the Bid Due Date needs to be certified by the Statutory Auditor/ Chartered Accountant of the Bidder.
3. This certificate to be provided on the letter-head of the Statutory Auditor/Chartered Accountant of the Bidder/ Member of the JV.

Certificate from the Statutory Auditor/ Chartered Accountant

Based on its books of accounts and other published information authenticated by it, this is to certify that _____ (name of the Project) located at _____ is being operated, managed and maintained by _____ (name of the Bidder/ Member) for the last _____ months/ years as on Bid Due Date.

(Signature of the Authorised Signatory of the Statutory Auditor/ Chartered Accountant)

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN :

Date :

Place

⁶ Should be for a continuous period of atleast 3 years prior to the Bid Due Date

Appendix-I
ANNEX-III**FINANCIAL CAPACITY OF THE BIDDER***(Refer to Clause 2.2.2 (B) of the RFP)***1. Cash Flow related data** *(All figures in INR Cr.)*

Description	Past 5 (five) Financial Years (Audited accounts)				
	Year 1 : FY	Year 2: FY	Year 3: FY	Year 4: FY	Year 5: FY
Operating Cash Flow					
Net Cash Flow					

2. Net Worth related data for the financial year preceding Bid Due Date *(All figures in INR Cr.)*

Description	Amount
Net-worth	INR

Certificate from the Statutory Auditor

This is to certify that the information contained above is correct as per the Books of Accounts of the Bidder/ Joint Venture Member who's Net-worth as on March 31, 2021 is Rs. _____ (Rupees in words). The methodology adopted for calculating such Net Worth is as per Clause 2.2.3 of the RFP

(Signature of the Authorised Signatory of the Statutory Auditor/ Chartered Accountant)

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN :

Date :

Place

Note:

1. Audited Balance Sheets, Financial Statements and Annual Reports, Profit & Loss statements, ITRs of the Bidder *(of each Member in case of a Joint Venture)* for the last 5 (five) financial years, preceding Bid Due Date shall be enclosed. The financial statements shall:

- a. reflect the financial situation of the Bidder or Joint Venture Members;

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- b. be audited by a Statutory Auditor;
 - c. be complete, including all notes to the financial statements; and
 - d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. In the case of a Joint Venture, a copy of the Jt. Bidding Agreement shall be submitted in terms of this RFP;
3. The Bidder/ each Member of the Joint Venture shall provide this Annex-II on its Statutory Auditor's / Chartered Accountant's letter-head.

HPIDB WEBSITE 19.08.2021



STATEMENT OF LEGAL CAPACITY

(To be forwarded on the letterhead of the Bidder/ Lead Member of Joint Venture)

Ref.

Date:

To,
The General Manager,
Himachal Pradesh Infrastructure Development Board,
New Himrus Building,
Himland, Circular Road,
Shimla
Himachal Pradesh.

Bid for: **“Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode”**

Dear Sir,

We hereby confirm that we/ our members in the Joint Venture (constitution of which has been described in the bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert Member's name) will act as the Lead Member of our Joint Venture.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the Joint Venture on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*



APPENDIX-II

Power of Attorney for signing of Bid

(Refer Clause 2.2.4)

(To be executed on Stamp paper of appropriate value and duly notarized)

Know all men by these presents, we..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms (name), son/ daughter/ wife of and presently residing at, who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the “**Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**”(the “**Project**”) to the Himachal Pradesh Infrastructure Development Board (the “**HPIDB**”) including but not limited to signing and submission of all bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to HPIDB, presenting us in all matters before HPIDB and/ or The Commissioner (Temple), Temple Trust Mata Shri Chintpurni, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with HPIDB or the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/ or till the entering into of the Concession Agreement with the Temple Trust Mata Shri Chintpurni.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2....

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Accepted

.....
(Signature)



(Name, Title and Address of the Attorney)

(Notarised)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*



APPENDIX-III

Power of Attorney for Lead Member of Joint Venture

(Refer Clause 2.2.4 of RFP)

(To be executed on Stamp paper of appropriate value and duly notarized)

Whereas the Himachal Pradesh Infrastructure Development Board (“**HPIDB**”) has invited Bids from interested parties for the “**Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**”)

And Whereas,, and (collectively the “**Joint Venture**”) being Members of the Joint Venture are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP) and other connected documents in respect of the Project,

And Whereas, it is necessary for the Members of the Joint Venture to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection with the Joint Venture’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We,having our registered office at, M/s. having our registered office at, and having our registered office at, (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. having its registered office at, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the bidding process and, in the event the Joint Venture is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Joint Venture and submission of its bid for the Project, including but not limited to signing and submission of all, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Joint Venture and generally to represent the Joint Venture in all its dealings with HPIDB and/ or The Commissioner (Temple), and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Temple Trust Mata Shri Chintpurni.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Joint Venture.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

1.

2.

.....
(Executants)
(To be executed by all the Members of the Joint Venture)

(Notarised)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*



APPENDIX-IV

Joint Bidding Agreement

(Refer Clause 2.2.5 of RFP)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. {....., (a company/ partnership/ individual/ society) incorporated under the} and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {....., (a company/ partnership/ individual/ society) incorporated under the} and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns).

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the “**Parties**” and individually as a “**Party**”

WHEREAS,

- (A) Himachal Pradesh Infrastructure Development Board, represented by its General Manager having its principal office at New Himrus Building, Himland, Circular Road, Shimla – 171001, India (hereinafter referred to as the “**HPIDB**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has been appointed as Nodal Agency by the Temple Trust Mata Shri Chintpurni through its Commissioner (Temple) cum Deputy Commissioner, Una for undertaking bidding process for **Selection of Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**”).
- (B) HPIDB has invited Bids (the “**Bids**”) by its Request for Proposal dated(the “**RFP**”) for development, operation and maintenance of the **Project**;
- (C) **Temple Trust Mata Shri Chintpurni** acting through its Commissioner (Temple) (the “**Authority**”) will sign the Concession Agreement with the Operator;
- (D) The Parties are interested in jointly bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



- (E) It is a necessary condition under the RFP document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP document.

2. Joint Venture

- 2.1 The Parties do hereby irrevocably constitute _____ JV⁷ (the “**Joint Venture**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the Selected Bidder and awarded the Project, it shall get the above-named JV incorporated and registered either as a company under the Companies Act 2013 or partnership firm under the Partnership Act or LLP under the Limited Liability Partnership Act, while retaining/ subscribing to the same share as specified in Clause 6 below, for entering into a Concession Agreement with the Authority and for performing all its obligations as the Operator in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead Member of the Joint Venture and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding process and until the Agreement Date under the Concession Agreement ;
- (b) Party of the Second Part shall be {the Member of the Joint Venture; and}

5. Joint and Several Liability

⁷ Name of JV

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement in accordance with the Concession Agreement.

6. Share of the Members in the Joint Venture

- 6.1 The Parties agree that the proportion of share among the Parties in the Joint Venture shall be as follows:

First Party:

Second Party:

- 6.2 The Parties undertake that the Parties specified in Clause 6.1 above shall hold 100% share in the Operator with Lead Member holding atleast 51% share and other member holding atleast 26% share until the 5th Anniversary of the Commercial Operations Date and further not less than 51% share till the end of Concession Period with Lead Member holding atleast 26% share.
- 6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or



- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the obligations of the Joint Venture Members are fully discharged under and in accordance with the Concession Agreement, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is either not qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by HPIDB to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of HPIDB and/ or the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)



In the presence of:

- 1.
- 2.

(Notarised)

Notes:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture Member.*
3. *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Agreement has been executed.*



APPENDIX-V

Letter Comprising the Financial Bid (Refer Clause 1.2.6)

Dated:

To,
The General Manager
Himachal Pradesh Infrastructure Development Board
New Himrus Building, Himland,
Circular Road, Shimla - 171001, India
Phone: 0177 – 2627312, 0177 - 2626696

Sub: Bid for “Selection of an Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode”

Dear Sir,

With reference to your RFP document dated _____, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/ our Financial Bid for the aforesaid Project. The Financial Bid is unconditional and unqualified.

1. I/ We hereby submit our Bid and offer to pay **Annual Concession Fee of Rs. _____ (Rupees in words)** to the Authority i.e. Temple Trust Mata Shri Chintpurni which shall be paid every year commencing from Commercial Operations Date or from the 1st day of the fifth month from the Effective Date, whichever is earlier, as per the terms and conditions contained in the Concession Agreement. The Annual Concession Fee will be increased @ 5% every year over the previous value.
2. I/We agree to pay the GST and all other applicable taxes to the Central Government, any State Government and/ or Local Authorities or the State of Himachal Pradesh for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

In witness thereof, I/ we submit this Financial Bid under and in accordance with the terms of the RFP and the Bidding documents.

Yours faithfully,

Date: _____ (Signature, name & designation of the Authorised Signatory)

Place:



Name and seal of Bidder/ Lead Member

HPIDB WEBSITE 19.08.2021



APPENDIX-VI

Bank Guarantee for Bid Security (Refer Clause 2.21.1 of RFP)

B.G. No.

Dated:

1. In consideration of you, The General Manager, Himachal Pradesh Infrastructure Development Board, having its office at New Himrus Building, Himland, Circular Road, Shimla - 171001 (hereinafter referred to as the “**HPIDB**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of M/s..... (a company registered under the Companies Act, 1956/ 2013/ LLP/ Partnership Firm/ Sole Proprietorship Firm registered under the relevant laws of India) and having its registered office at {and acting on behalf of its Joint Venture/ Joint Venture⁸} (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/ their executors, administrators, successors and assigns), in respect of the “**Selection of an Operator for Operation, Maintenance & Management of Shri Chintpurni Sadan, Block-C, District Una, Himachal Pradesh on Public Private Partnership (PPP) mode**” (hereinafter referred to as the “**Project**”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as “**Bidding Documents**”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of the RFP Document (hereinafter referred to as the “**Guarantee**”), irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to HPIDB an amount of **Rs.2,00,000/- (Rupees Two Lakhs only)** as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by HPIDB stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the aforesaid amount due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of HPIDB is disputed by the Bidder or not, merely on the first demand from HPIDB stating that the amount claimed is due to HPIDB by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set-forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our

⁸ Applicable only in the case of Bidder applying as Joint Venture/ Joint Venture.

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liability under this Guarantee shall be restricted to an amount not exceeding **Rs.2,00,000/- (Rupees Two Lakhs only)**.

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date and for the claim period as prescribed by law, or for such extended period as may be mutually agreed between HPIDB and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that HPIDB shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of HPIDB that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between HPIDB and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, HPIDB shall be entitled to treat the Bank as the principal debtor. HPIDB shall have the fullest 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 Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder 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 Bidding Documents or the securities available to HPIDB, and the Bank shall not be released from its liability under these presents by any exercise by HPIDB of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of HPIDB or any indulgence by HPIDB to the said Bidder or by any change in the constitution of HPIDB 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 or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [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 HPIDB to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be



enforceable against the Bank, notwithstanding any other security which HPIDB may have obtained from the said Bidder 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 HPIDB 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.2,00,000/- (Rupees Two Lakhs Only)**. The Bank shall be liable to pay the said amount or any part thereof only if HPIDB serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date and claim period as prescribed by law)].
14. This Bank Guarantee no. _____, dated _____ shall also be operative at Shimla, Himachal Pradesh and if invoked, be encashable at the _____ [name of the Bank and its branch at Shimla, Himachal Pradesh], branch code no.: _____

Signed and Delivered by Bank

By the hand of Mr./Ms., its and authorized official.

(Signature of the Authorized Signatory)

(Official Seal)

**ANNEXURE-A***(Refer Clause 2.2.2(A)(i) of the RFP)***CHECK LIST OF FACILITIES FOR CLASSIFICATION/ RE-CLASSIFICATION OF OPERATIONAL HOTELS ISSUED BY MOT, GOVT. OF INDIA**

FACILITIES & SERVICES	2*	3*	4*	5*/ 5*D	Yes/No	COMMENTS
Full time operation 7 days a week in season.	N	N	N	N		
Establishment to have all necessary trading licenses/ Permissions.	N	N	N	N		
Establishment to have public liability insurance.	D	D	D	D		
24 hr. lifts for buildings higher than ground plus two floors.	N	N	N	N		Mandatory for all hotels. Local laws may require a relaxation of this condition. Easy access for the differently abled guests.
Bedrooms, Bathrooms, Public areas and kitchen fully services daily.	N	N	N	N		
All floor surfaces clean and in good shape.	N	N	N	N		Floor may be of any type.
Minimum 10 lettable rooms, all rooms with outside windows / ventilation.	N	N	N	N		
Minimum size of bedroom excluding bathroom in sq.ft.	120	130	140	200		Rooms should not be less than the specified size. The area may include the vestibule and other covered area within the room but exclude outdoor verandah/ balcony.

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						Single occupancy rooms may be 20 sq.ft. less.
Air conditioning - % of Rooms.	25%	50%	100%	100%		Air-conditioning / heating depends on climatic conditions and architecture. Room Temperature should be between 20 to 28 degree Celsius.
A clean change of bed and bath linen daily and between check – in.	N	N	N	N		Definitely required between each check – in. On alternate days for 1 & 2 Star category hotels.
Minimum bed width for single 90 cm and double 180cm.	N	N	N	N		
Mattress thickness minimum 10 cm.	D	N	N	N		Coir, foam or spring foam
Minimum bedding 2 sheets, pillow and case, blanket, mattress protector/ bed cover.	N	N	N	N	N	Blankets available in air conditioned room as per seasonal requirement in non A/C rooms. Mattress protector is 'desirable' in 1 Star and 2 Star category hotels and 'necessary' for the other categories.
Suite. (2 rooms or 2 room-bays having a bedroom and separate sitting area, having one bathroom and one powder room.)	D	D	D	N	N	Minimum 1 suite. A suite must be sold as one room.
Hairdryers.	D	D	N	N	N	Where not provided in bathroom, must be available on request. 3 Star, 4 Star, 5 Star and 5 Star Deluxe category hotels shall provide hair dryer



						facility in the room on complimentary basis. In 1 Star and 2 Star hotels, this facility will be made available on request on complimentary basis.
Safe keeping / in room safe.	D	D	D	N	N	1,2, and 3 Star hotels to have facilities for safe keeping in the reception. All 4 Star, 5 Star and 5 Star Deluxe hotels shall provide a safe in the room.
Mini bar / Fridge All 3 Star hotels shall have facility of a mini fridge and all 4 Star, 5 Star, and 5 Star Deluxe hotels shall have a facility of mini bar.	D	D	N	N	N	Contents must conform to local laws.
Drinking water with minimum one glass per guest.	N	N	N	N	N	All star category hotels to provide 2 sealed bottles of branded packaged drinking water of minimum 500 ml per person per day on complimentary basis. Ultra violet treated water will not be acceptable.
Shelves/ drawer space.	N	N	N	N	N	Necessary for hotels of 1,2and 3 Star category to have a wardrobe.
Wardrobe with minimum 4 Clothes' hangers per bedding.	N	N	N	N	N	In one star or two star hotels, this may be without doors.
Sufficient lighting (1 lamp per bed).	N	N	N	N	N	
A 5 amp earthed power Socket.	N	N	N	N	N	



A bedside table and drawer.	N	N	N	N	N	1 per twin bed and two for a double bed.
TV Cable if available.	D	D	N	N	N	TV must have a remote. Exception: for eco and nature resorts TV cable is not mandatory for 3 Star to 5 Star Deluxe category hotels. However, it is mandatory that they provide a television with cable in the lobby or other common area.
A writing surface with sufficient lighting.	D	D	N	N	N	
Chairs.	N	N	N	N	N	Preferably one per bed
Waste paper basket.	N	N	N	N	N	
Opaque curtains or screening at all windows.	N	N	N	N	N	All 4 Star, 5 Star, and 5 Star Deluxe hotels shall have blackout curtains
A mirror at least half length (3 ft.).	N	N	N	N	N	
A stationary folder containing Stationary.	D	D	N	N	N	
A 'do not disturb' notice.	N	N	N	N	N	
Night spread / bed cover.	N	N	N	N	N	
Energy saving lighting.	N	N	N	N	N	
Linen Room.	N	N	N	N	N	Should be well ventilated
BATHROOM						
Number of rooms with attached bathrooms.	All	All	All	All	All	All bathrooms to have a sanitary bin with lid.
Minimum size of bathroom in square feet.	30	30	36	36	45	25% of bathrooms in 1 & 2 Star hotels to have western style WC. For hotels built before 1.1.2012, the Minimum bathroom

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						size may be relaxed by 10% (to be rounded off to the next integer) provided the total size of the room and the bathroom taken together are as follows: 1 Star & 2 Star – 150 sq. ft., 3 Star – 166 sq. ft., 4 Star – 176 sq. ft., 5 Star & 5 Star Deluxe – 245 sq. ft.
1 bath towel and 1 hand towel to be provided per guest.	N	N	N	N	N	
Bath Mat.	D	D	N	N	N	
Guest toiletries to be provided. Minimum 1 new soap per guest.	N	N	N	N	N	Quality products depending on Star category.
Bottled toiletry products to be provided.	D	D	D	N	N	
Clothes – hooks in each bath / shower room.	N	N	N	N	N	All star category hotels shall provide two (2) clothes hooks in the bath / shower room
Sanitary bin.	N	N	N	N	N	These must be covered
Each western WC toilet to have a seat with lid and toilet paper.	N	N	N	N	N	
All Star hotels shall provide water sprays or bidets or washlets or other modern water based post-toilet – paper hygiene facilities.	N	N	N	N	N	
Floors and walls to have non – porous surfaces.	N	N	N	N	N	
Hot and Cold running water available 24	N	N	N	N	N	



hours.						
Shower cabin.	N	N	N	N	N	A shower with shower curtain will suffice where shower cabin is not available.
Bath tubs.				D	D	
Water saving taps and Showers.	N	N	N	N	N	
Energy saving lighting.	N	N	N	N	N	
PUBLIC AREA						
Lounge or seating area in the lobby.	N	N	N	N	N	Lobby shall have furniture and fixtures which shall include chairs / arm chairs, sofa, tables and fresh floral display. Door man on duty for 4 star categories and below 4 star categories, the presence of a door man on duty in the lounge or sitting area in the lobby shall not be mandatory. However, in such areas, the presence of staff on duty shall be obligatory around the clock 24/7
Reception facility.	N	N	N	N	N	Manned minimum 16 hours. Call service 24 hours. Local directions to hotel including city street maps to be available.
Valet (parking) services to be Available.	D	D	N	N	N	
Availability of Room, F&B and other tariff.	N	N	N	N	N	
Heating and cooling to be provided in public areas.	-	-	-	N	N	Temperatures to be between 20 degrees Celsius to 28 degrees Celsius. Air – conditioning in common areas like



						lobby, restaurants, verandahs, bar where they are open to nature on one or more sides, shall not be mandatory for beach, lake, backwater, river, hill, mountain, forest or nature hotels & Resorts.
Public rest rooms for ladies and gents, a wash basin with running hot and cold water, a mirror, a sanitary bin with lid, unisex 7 ladies toilet.	N	N	N	N	N	
ROOM AND FACILITIES FOR THE DIFFERENTLY ABLED GUEST						
At least one room for the differently abled guest.	N	N	N	N	N	<p>The room shall have low height furniture, low peep hole, cupboard with low clothes hangers, audible and visible (blinking light) alarm system and doorbell.</p> <p>The almirah / cupboard doors in the differently abled room should be sliding to enable opening the same by the differently abled person.</p> <p>Blinking light in the room and bathroom should also be connected with the door bell for the hearing impaired.</p> <p>Cordless telephone in the room. Direct calling facility to the front desk or operator.</p>
Bathroom.	N	N	N	N	N	Door width for room



						of the differently abled persons and bathroom of such rooms should allow easy accessibility of wheel chair made available by the hotel).
						<p>For new hotels coming up after 01.04.2017, the minimum door width of such rooms and their bathroom shall be minimum 90 cm.</p> <p>The door width of the room and bathroom for differently abled persons in existing hotels shall be 90 cm. with effect from 01.04.2023</p> <p>Bathroom for the differently abled guest shall have suitable fixtures like low wash basin with wheel chair accessibility, low vanity unit, Wall mounted seat in shower area, hand shower, Grab bars net to the WC and shower area.</p>
Ramps with anti-slip floors at the entrance. Minimum door width should be one meter to allow wheel chair access.	N	N	N	N	N	<p>Fixed and anti – slip ramp to be provided in all public areas.</p> <p>Free accessibility in all public areas, and to at least one restaurant in 5 star and 5 star deluxe hotel.</p>
Public Restrooms.	N	N	N	N	N	All star category hotels should have a public restroom for differently abled guests (unisex) with



						<p>minimum door width which allows easy accessibility of wheel chair (made available by the hotel). Low height urinal with grab bars.</p> <p>For new hotels coming up after 01.04.2017, the minimum door width of such public rest room (unisex) shall be minimum 90 cm.</p> <p>For existing hotels, the minimum door width of public restroom (unisex) shall be mandatory after 01.04.2023</p>
FOOD & BEVERAGE OUTLETS						
1 Star & 2 Star.						1 & 2 Star categories should have minimum one dining room serving all meals.
3 Star Category.						One Multi – cuisine Restaurant cum Coffee Shop open from 07.00 am. To 11.00 pm. And 24 hr. Room Service.
4 Star category (with alcohol service or with no alcohol service).						<p>Grade A cities:</p> <p>One Multi – cuisine Restaurant cum Coffee Shop open from 07.00 am. To 11.00 pm., one specialty Restaurant and 24 hr. Room Service.</p>
						The specialty Restaurant may either be indoors with air-conditioning, or outdoors. The Specialty Restaurant must serve specific



						form of cuisine. The Specialty Restaurant may be open for lunch / dinner.
						<u>Cities other than grade A cities:</u> One Multi – cuisine Restaurant cum Coffee Shop open from 07.00 am. To 11.00 pm. and 24 hr. Room Service.
5 Star category (with alcohol service or with no alcohol service) and 5 Star Deluxe.						<u>Grade A cities:</u> One 24 hour Multi Cuisine Restaurant cum Coffee Shop, one Specialty Restaurant and 24 hr. Room Service.
						The Specialty Restaurant may either be indoors with air – conditioning, or outdoors. The Specialty restaurant must serve specific form of cuisine. The Specialty Restaurant may be open for lunch / dinner.
						<u>Cities other than Grade A cities:</u>
						One 24 hour Multi Cuisine Restaurant cum Coffee Shop and 24 hr. Room Service. One Specialty Restaurant would be desirable.
Grade A: Delhi, ** Mumbai, Kolkata, Chennai, Bangalore, Pune, Hyderabad, Secunderabad.						
Note: The Ministry of Tourism may review and revise the cities falling under the Grade ‘A’ from the time to time.						
** Delhi would include the hotels falling Gurgaon, Faridabad, Ghaziabad, Noida, And Greater Noida”						
Crockery and glassware.	N	N	N	N	N	Plastic ware acceptable in pool area.



Cutlery to be at least stainless steel.	N	N	N	N	N	All category hotel should seegood quality metal cutlery. Aluminum cutlery is prohibited.
Bar.	D	D	D	N	N	Bar will not be mandatory wherever bar licence is prohibited as per local law. Wherever bar is allowed as per local law, the hotel will have to first obtain bar license before applying to the Ministry of Tourism for Classification of the hotel. Liquor shops/ liquor stores will not be considered while granting classification under 'with alcohol' category.

KITCHEN / FOOD PRODUCTION AREA

Refrigerator with deep Freezer.	N	N	N	N	N	Capacity based on quantum of F&B Operations.
Segregated storage of meat, fish and vegetables.	N	N	N	N	N	Meat, fish and vegetables to be kept in separate freezers
Tiled walls, non slip floors.	N	N	N	N	N	
Colour coded synthetic chopping boards.	N	N	N	N	N	Wooden chopping boards
Head covering for production staff.	N	N	N	N	N	
Daily germicidal cleaning of floors.	N	N	N	N	N	
Good quality cooking vessels / utensils.	N	N	N	N	N	Use of aluminum vessels is prohibited except for bakery
All food grade	N	N	N	N	N	



equipment containers.						
Drinking water.	N	N	N	N	N	Water treated with UV+ filtration
Ventilation system.	N	N	N	N	N	
Garbage to be segregated – wet and dry.	N	N	N	N	N	To encourage recycling
Wet garbage area to be air-conditioned.	D	D	N	N	N	
Receiving areas and stores distinct from garbage area.	N	N	N	N	N	Should have sink with table surface, weighing machine quality control and pre wash area.
Six monthly medical check ups for production staff.	N	N	N	N	N	Records to be submitted along with pathological records to HRACC during inspection of the hotel
First aid training for all kitchen staff.	N	N	N	N	N	
Pest control.	N	N	N	N	N	Record to be shown to the HRACC during inspection of the hotel
STAFF						
Staff uniforms for front of the house.	N	N	N	N	N	Uniforms to be clean and in good condition.
English speaking front office staff.	D	D	N	N	N	This may be relaxed outside the metros / sub-metros for 1 Star and 2 Star category hotels.
Percentage of Supervisory staff.	20%	20%	40%	40%	80%	Hotels of 4 Star category and above should have qualified Heads of Departments. The supervisory or the skilled staff may have training or skill certification as follows: Degree / Diploma



						from Central or Star IHMs/ FCIs or from NCHMCT affiliated IHMs or from other reputed Hospitality Schools.
Percentage of skilled staff.	20%	20%	30%	30%	60%	<p>The supervisory or the skilled staff may have training or skill certification as follows:</p> <p>Degree / Diploma from Central or Star IHMs/ FCIs or from NCHMCT affiliated IHMs or from other reputed Hospitality Schools.</p> <p>Skill training certificate issued under the guidelines and scheme of the Ministry of Tourism</p>
STAFF WELFARE FACILITIES						
Staff Rest Rooms.	D	D	N	N	N	Separate for male and female employees, with bunk beds. Rooms should be well lighted and ventilated
Staff locker Rooms.	D	D	N	N	N	
Toilet facilities.	N	N	N	N	N	Full length mirror, hand dryer with liquid soap dispenser
Separate Dining area & Facility.	D	D	N	N	N	
CODE OF CONDUCT FOR SAFE & HONOURABLE TOURISM						
Display of pledge.	N	N	N	N	N	Pledge to be displayed prominently in the staff/ back areas / office premises of all the Heads of Departments (HODs)
Training for	N	N	N	N	N	At time of Joining

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'Code of Conduct for safe & Honourable Tourism'.						(orientation programme and subsequent in – house training)
Maintenance of Action Taken Report with regards to compliance of the provisions of the Code.	N	N	N	N	N	Signatories of the 'Code of Conduct' to maintain record of action taken in compliance of the provisions of the code.
Focal points / Nodal officers	N	N	N	N	N	Two nodal officers to be nominated (from HRD and Security side etc.) for hotel with more than 25 personnel and one focal point for hotel with less than 25 personnel.
GUEST SERVICES						
Provision for wheelchair for the differently abled guest.	N	N	N	N	N	Wheel chair to be made available on complimentary basis in hotels of all categories.
Valet (parking) services to be available.	D	D	N	N	N	
Dry cleaning / laundry.	D	D	D	N	N	In house for 5 Star Deluxe hotels. For 5 Star category and below, may be outsourced.
Tea / coffee making facility in the room.	D	D	D	N	N	Tea / coffee making facilities in the room to be made available on complimentary basis in all 4 Star, 5 Star and 5 Star Deluxe hotels.
Iron and Iron Board facility.	N	N	N	N	N	Each hotel up to the level of 4 star to have a number of irons and ironing board equal to 20% of the number of lettable rooms, to be provided to a resident guest on request. 5 star and 5 star deluxe hotels to have iron



						and ironing board in every lettable room.
Paid transportation on call.	D	D	N	N	N	Guest should be able to travel from hotel
Shoe cleaning shoe horn & Slippers.	D	D	D	N	N	Free facility to be provided for in house guest
Ice (from drinking water) on Demand.	D	D	N	N	N	Complimentary on request
Acceptance of common credit cards and facility/ infrastructure for accepting/ making payments by digital Transactions.	N	N	N	N	N	
Assistance with luggage on Request.	N	N	N	N	N	
A public telephone on premises. Unit charges made known.	D	D	N	N	N	There should be at least one telephone no higher than 24” from floor level in 5 and 5 Star Deluxe (to also cater to differently abled guest)
Wake – up call service on Request.	N	N	N	N	N	
Messages for guests to be recorded and delivered.	N	N	N	N	N	A prominently displayed message board will suffice for 1& 2 Star Categories
Name address and telephone number of doctors with front desk.	N	N	N	N	N	Doctor on call in 3,4,5 & 5 Star Deluxe
Stamps and mailing Facilities.	D	D	D	D	D	
Newspapers available.	D	D	D	N	N	This may be placed in the lounge for 1,2,& 3 Star hotels
Access to travel desk Facilities.	N	N	N	N	N	This need not be on the premise for 1,2&3 Star

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						categories
Left luggage facilities.	D	D	N	N	N	This must be in a well secured room / 24 hours manned area. All 4 Star, 5 Star and 5 Star Deluxe hotels shall provide luggage racks, portable or fixed, for two large suitcases. This will be stated on the hotel's website under the head 'Facilities and Amenities provided on complimentary basis' and mentioned to guest while checking in.
Provision for emergency supplies toiletries / first aid Kit.	D	D	N	N	N	
Health – Fitness and Barber's Shop.	D	D	D	D	N	Indian system of treatments should preferably be offered
Beauty Salon and Barber's Shop.	D	D	D	D	D	
Florist.	D	D	D	D	D	
Utility shop / kiosk.	D	D	D	D	D	The presence of a utility kiosk / shop will not be a mandatory condition for classification under 1 to 5 Star Deluxe categories. NO separate book shop shall be necessary.
Money changing facilities.	D	D	D	D	D	Money changing facility to be made available.
SAFETY & SECURITY						
Metal detectors (door frame or hand held).	D	D	N	N	N	For 5 Star Deluxe category, it would be 'Necessary' to have an x-ray machine at the guest entrance for screening of baggage. Manual check may



						be conducted for staff and suppliers at designated entry points.
CCTV at strategic location.	N	N	N	N	N	
X-Ray Machine.	D	D	D	D	N	All hotels should conduct antecedent verification of their staff and suppliers by the Police / private security.
Under belly scanners to screen vehicles.	D	D	D	N	N	All hotels to conduct periodic fire drills and maintain 'Manuals' for disaster management, First Aid and Fire Safety
Verification.	N	N	N	N	N	
Staff trained in firefighting Drill.	N	N	N	N	N	A safety chain / wishbone latch is acceptable in place of viewport / peephole.
Security arrangements for all hotels entrances.	N	N	N	N	N	These can be battery operated.
Each bedroom door to be fitted with lock and key, viewport / peephole & internal securing device.	D	D	N	N	N	
Smoke Detectors.	N	N	N	N	N	
Fire and Emergency alarm should have visual & audible signals.	N	N	N	N	N	
First aid kit with over the counter medicines at the front desk.	N	N	N	N	N	
Fire Exit Signs on guest floors with emergency / backup power.	N	N	N	N	N	
COMMUNICATION FACILITIES						

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



Telephone facility within arm's reach of the toilet seat	D	D	D	N	N	
Provide at least two multi – purpose sockets.	N	N	N	N	N	<p>All Star hotels shall provide at least two multi-purpose sockets capable of handling US, European Community and Japanese plugs at or just above the table level. It should be possible for guest to charge a laptop and cell phone simultaneously. This condition shall be applicable to all new hotels that will start operating from 01.04.2016.</p> <p>For the hotels which have come into operation before 31.03.2016 this parameter will be applicable from 01.04.2022. However, till such time as this facility is provided on a permanent basis, it will be mandatory for all Star hotels to provide multi-socket adapter plugs on request.</p>
A telephone for incoming & outgoing calls in the room.	D	N	N	N	N	4 star and above should have direct dialing and STD / ISD facilities. 1,2 and 3 Star category hotels may go through a telephone exchange.
PC available for guest use with internet access.	D	D	N	N	N	This can be a paid service. Upto 3 Star, PC can be in the executive offices, Internet subject to local

Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.



						access being available.
E-mail service.	D	D	N	N	N	Subject to local internet access being available.
Fax, photocopy and printing Services.	N	N	N	N	N	
In room Internet / wi-fi connection.	D	D	D	N	N	Subject to local internet accessbeing available. Wi-Fi wherever possible.
Business Centre.	D	D	D	N	N	This should be a dedicated area. (This provision may be relaxedfor resort destinations, tourist and pilgrimage centers).
Swimming Pool.	D	D	D	D	N	This can be relaxed for hill destinations. Mandatory to have trained Life Guard, Board containing Do's and Don'ts, No Diving sign, pool depth etc. should be displayed at a strategic location in the pool area. All 4 Star, 5 Star and 5 Star Deluxe hotels shall provide a luminous LED wall clock with numerals of three inches or more on display near their swimming pools
Parking Facilities.	D	D	N	N	N	Should be adequate in relation to the number of rooms & banquet / convention hall capacity. Exclusively earmarked accessible parking nearest to the entrance for



						differently abled guest.
Conference Facilities.	D	D	D	D	N	
ECO FRIENDLY PRACTICES						
Sewage Treatment Plant.	N	N	N	N	N	A Sewage Treatment Plant will not be a mandatory condition for hotels which have obtained completion certificate for construction before 01.04.2012.
Rain Water Harvesting.	N	N	N	N	N	
Waste management.	N	N	N	N	N	
Pollution control methods for air, water and light.	N	N	N	N	N	
Introduction of non CFC equipment for refrigeration and air conditioning and other Eco-friendly measures/initiatives.	N	N	N	N	N	

IMPORTANT INSTRUCTIONS :

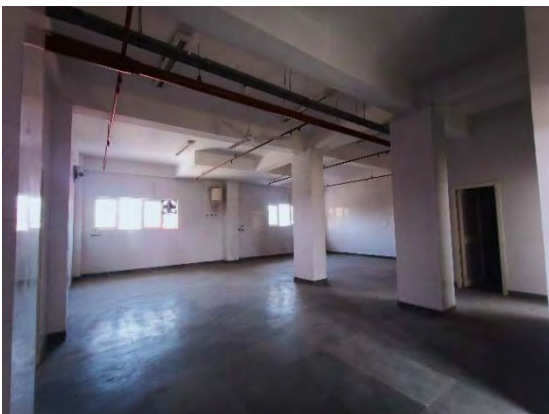
IN THE ABOVE TABLE :

‘D’ stands for **DESIRABLE**; and

‘N’ stands for **NECESSARY**

There is no relaxation in the ‘Necessary’ criteria of the above checklist; for the purpose of qualification, each Eligible Project whose experience is being claimed by the Bidder should essentially comply with all the **Necessary (N)** Services and Facilities of the above checklist, except to the extent as specified in the comments column of above checklist. Further, each such each Eligible Project should also meet atleast 50% (fifty percent) of the **Desirable (D)** Services and Facilities of the above checklist.

ANNEXURE-B
PHOTOGRAPHS OF SHRI CHINTPURNI SADAN BLOCK-C (HOTEL & RESTAURANT)



Selection of Operator for Operation, Maintenance and Management of Shri Chintpurni Sadan Block-C, District Una, Himachal Pradesh on PPP mode.





CONCESSION AGREEMENT

BETWEEN

**THE COMMISSIONER (TEMPLE), ON BEHALF OF THE TEMPLE TRUST MATA SHRI CHINTPURNI
JI**

AND

.....

FOR

**SELECTION OF THE OPERATOR FOR OPERATION & MANAGEMENT OF SHRI CHINTPURNI
SADAN BLOCK –C, DISTRICT UNA, (A COMMERCIAL COMPLEX – HOTEL & RESTAURANT) IN
HIMACHAL PRADESH ON PPP MODE**



**The Commissioner (Temple)-cum-Deputy Commissioner, Una,
Temple Trust Mata Shri Chintpurni Ji,
Chintpurni, Teh. Amb,
District Una, Himachal Pradesh**

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CONCESSION AGREEMENT

This Concession Agreement (the “**Agreement**”) is entered into on this the [] day of, 20[] at, Himachal Pradesh

AMONGST

1. **Temple Trust, Mata Shri Chintpurni Ji**, Post Office Chintpurni, Tehsil Amb, Distt. Una Himachal Pradesh Pin 177110, acting through **The Commissioner (Temple)** (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the subject or the context include its successors) of One Part;

AND

2. M/s *[insert the name of the Selected Bidder]*, a *[Company/ Partnership Firm/ Sole proprietorship/ LLP]* incorporated/ registered under the *[name of the statute under which incorporated]* and having its registered office at *[insert address of the registered office]*, acting through its*[designation]*, duly authorized in this behalf by way of Power of Attorney/ Board Resolution dated (hereinafter referred to as the “**Operator**” which expression shall unless repugnant to the subject or the context include its successors) of the Other Part.

WHEREAS:

- A. The Authority is the rightful owner of the Shri Chintpurni Sadan Block – C, District Una (A Commercial Complex – Hotel & Restaurant) at Chintpurni, Tehsil Amb, Distt. Una Himachal Pradesh and intends to operate, maintain and manage the same by engaging private sector entrepreneur through Public Private Partnership (PPP) on Operation, Maintenance, Management and Transfer (OMMT) basis (the “**Project**”).
- B. The Authority through Himachal Pradesh Infrastructure Development Board (HPIDB) had invited proposals for the selection of an Operator through the competitive route for the operation of the Project on OMMT basis from eligible Bidders, including inter alia **M/s** *[name of the Selected Bidder]* by issuing the Request for Proposal (“**RFP**”) document dated2021 containing inter alia the minimum qualification for a Bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.
- C. On evaluation of the submitted proposals, *{M/s [name of the Selected Bidder] or JV [name of the JV] with M/s being the Lead Member and M/s., being the other Member of the JV,}* was found to have quoted the highest amount of Annual Concession Fee of Rs...../- (Rupees Only) which was accepted by HPIDB. **M/s**..... *[name of the Selected Bidder]* was declared as the “**Successful Bidder**” and issued Notice of Award No..... dated (“**NOA**”) to *[name of the Selected Bidder/ JV]* requiring the Successful Bidder/ incorporated JV to inter alia:

- i. furnish Performance Security by way of an unconditional and irrevocable Bank Guarantee in favour of The Commissioner (Temple); and
 - ii. execute this Agreement within 30 (thirty) days of the date of issue of NOA pursuant to complying with the aforesaid requirements from sr. no. (i) & (ii)¹.
- D. The Selected Bidder has provided Performance Security by way of an unconditional and irrevocable Bank Guarantee No..... dated from Bank for an amount of Rs...../- (Rupees only) in favour of **The Commissioner (Temple), Temple Trust, Mata Shri Chintpurni Ji.**

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

1. Definitions and Interpretation

1.1. Definitions

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

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year or such period as may be changed by the Government if any.;

“Affected Party” shall have the meaning set forth in Clause 14.1;

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

“Agreement Date” means the date of execution of this Agreement;

“Agreement Period” means the period starting on and from the Agreement Date and ending on the Transfer Date;

“Annual Concession Fee” shall have the meaning set forth in Clause 4.1.1;

¹ In case of the Successful Bidder being a JV, to incorporate and register the JV in terms of the RFP document and such incorporated JV shall execute this Agreement along with the Selected Bidder

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement. The term Applicable Laws also includes any bye-laws or regulations of the Temple Trust;

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

“Approvals” means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals from the Authority, Temple Trust and any other regulatory authority, as may be applicable;

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

“Auditors” means a reputable firm of chartered accountants acting as the auditors of the Operator for this project, appointed in accordance with Clause 12.2;

“Bank Guarantee” means an irrevocable and unconditional bank guarantee issued by a Bank in favour of **The Commissioner (Temple), Temple Trust Mata Shri Chintpurni Ji** and furnished by the Operator to the Authority for guaranteeing the due performance of the obligations of the Operator under this Agreement. Here, **Bank** means any Nationalized/ Scheduled Bank in India acceptable to the Authority;

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

“Bid Documents” means the RFP and the Agreement including its schedules;

“Business Day” means a day on which banks are generally open for business in Una, Himachal Pradesh in India;

“Change in Law” shall have the meaning ascribed to it under Clause 18.1;

“Commercial Operations” means the commercial utilization of the Project Facility or any part thereof, in terms of this Agreement for provisioning of facilities and services to the Users and charging, demanding, collecting and appropriating the User Charges;

“Commercial Operations Date” or “COD” means the date on which the Operator commences operations of the Project or any part thereof for its Commercial Operations after completion of Furnishing Works and all Approvals including consent to operate (if required) from the concerned Competent Authority to start operations at the Project Facility or any part thereof;

“Competent Authority” means the Temple Trust, any agency, authority, department, ministry, public or statutory Person of the Government of Himachal Pradesh or Government of India, or any local authority or district administration or any other sub-division thereof, with authority over aspects of implementation of the Project or having jurisdiction over all or any part of the Project Facility or the performance of all or any of the services or obligations of the Operator under or pursuant to this Concession;

“Concession Period” is the period of 10 (ten) years extendable further by a period of 5 (Five) years, at the sole discretion of the Authority for which this Concession is granted, commencing from the Effective Date, provided that the Operator is not in default of any of its obligations under this Agreement, is operating & maintaining the Project satisfactorily in accordance with the provisions stipulated in this Concession Agreement and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project.

“Conditions Precedent” shall have the meaning set forth in Clause 5.1

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

- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; and
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement or under law.

Provided however, that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval

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

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a. the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the **"principal"**) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority's Default;

provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Operator, it shall for the purposes of this Agreement be deemed to be

Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on after the COD, shall in no case exceed 85% (eighty five percent) of the Total Project Cost.

“Dispute” shall have the meaning set forth in Clause 19.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 19;

“Effective Date” means the date on which the Project Facility is handed over and provided to the Operator on *as is where is* basis free of Encumbrances to develop, operate and maintain the Project, pursuant to issuance of Declaration of License as per Clause 5.2 of this Agreement;

“Encumbrances” means, in relation to the Project Facilities, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities, wherever applicable herein;

“Existing Property” shall mean the existing fully constructed Shri Chintpurni Sadan, Block-C (Commercial Complex- Hotel & Restaurant) located at the Project Site shown in **Schedule-A**, along with all moveable and immovable assets thereon/ thereat comprising of civil structures, rooms, parking facility, restaurant, kitchen, driver’s accommodation, lifts, etc. as outlined in **Schedule-B**, in respect of leave and license rights shall be granted by the Authority to the Operator for implementation of the Project in terms of this Agreement;

“Financial Year” shall mean the year commencing from the 1st April of any calendar year and ending on 31st March of the next calendar year;

“Financing Agreements” or **“Financing Documents”** mean the documents/ agreements executed by the Operator in respect of any financial assistance to be provided by the Lenders to the Operator by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost and includes any amendments or modifications made to it;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning set forth in as per Article 14;

“Furnishing Period” means the period set forth in Clause 3.5;

“Furnishing Works” means and includes any up-gradations, additions, alterations (except structural changes or façade modification), furnishing, equipping, refurbishment, replacement, white-wash, paint, provisioning of furniture, linen, curtains, upholstery, consoles, LED TVs, equipments & appliances, utensils for kitchen & BOH, other furnishing items, installation of

electrical & mechanical appliances, fittings & fixtures, etc., as the Operator may undertake during the Furnishing Period in accordance with the terms of this Concession Agreement and Good Industry Practice equivalent to atleast 2-star category hotel guidelines issued by the Ministry of Tourism, Govt. of India, for operationalizing the Project Facility in all respects;

“GOI” means the Government of India;

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

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement equivalent to atleast 2-star category hotel guidelines issued by the Ministry of Tourism, Govt. of India, and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

“Joint Inventory – Site” shall have the meaning ascribed to it under Clause 5.2;

“Lenders” means financial institutions, banks debenture holders, international credit agencies and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Operator under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold paripasu charge on the assets, rights and interests of the Operator, if allowed by the Authority;

“License” shall have the meaning set forth in Clause 10.1.1;

“Nodal Officer” shall be the Temple Officer of the Temple Trust or any other person appointed by the Authority, who shall perform the roles and responsibilities as set forth in Clause 13.3 of this Agreement;

“O&M” or “Operations & Maintenance” means the operation, management and maintenance of the Project Facility equivalent to atleast 2-star category hotel guidelines issued by the Ministry of Tourism, Govt. of India and includes all matters connected with or incidental to such operations, management and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement;

“O&M Period” shall mean the period commencing from the Commercial Operations Date and ending on Termination Date either by efflux of time or otherwise, in case of premature termination;

“Operator’s Equipment” means all the equipment, furnishings, furniture, fitting & fixtures, machinery, mechanical/ electrical appliances, apparatus, hardware/ software, various things, items, consumables, etc. of whatever nature, required for the furnishing, up-grading, operating, maintaining and managing of the Project Facility and the remedying of any defects;

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

“Performance Security” shall have the meaning as set forth in Clause 9.1 of this Agreement;

“Person” means any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, Competent Authority or other entity, having legal capacity to sue and be sued in its name;

“Prohibited Activities” shall mean the activities strictly not permitted to be carried out at the Project Facility. Some of the said activities are listed out in **Schedule-F** of this Agreement;

“Project” means, subject to the provisions of this Agreement, (i) carrying out of Furnishing Works of the Existing Property including all activities incidental thereto at the Project Site including but not limited to all additions, modification, alterations and extensions thereto as may be effected by the Operator from time to time during the Concession Period; (ii) management, Operations & Maintenance of the Project Facility; (iii) determining, levying, collection and appropriation of the User Charges; (iv) insurance of the Project Facility for the purpose of providing the services on a continuous basis; and (v) transfer of the Project Facility to the Authority at the end of the Concession Period as a running concern or on its prior termination in accordance with the provisions of this Agreement;

“Project Assets” means all physical and other assets, both tangible and intangible, relating to and forming part of the Project Site including, but not limited to, (i) movable assets; (ii) buildings and immoveable fixtures or assets; (iii) rights over the Project Site in the form of licence, Right of Way or otherwise; (iv) Project Facilities situated on the Site; (v) financial assets, such as receivables, security deposits, cash, etc.; (d) insurance proceeds; and (e) Applicable Permits and authorisations relating to or in respect of the Project.

“Project Facility” shall mean and include the Existing Property i.e. Shri Chintpurni Sadan, Block-C (Commercial Complex – Hotel & Restaurant) owned by the Temple Trust Mata Shri Chintpurni, in respect of which leave and license rights are granted by the Authority to the Operator for carrying out of Furnishing Works and O&M, in terms of this Agreement; the term Project Facility also includes the movement areas, circulation areas, all external and internal services, drainage facilities, sign boards, electrical works, etc. already constructed/ installed by the Authority or to be procured, installed, up-graded and set-up by the Operator including provisioning of all the amenities and facilities; its repair, rectification, replacement and renovation from time to time, for the purpose of implementation of the Project in terms of this

Agreement. Also if the Operator constructs any additional structure(s) or facilities during the currency of the Concession Period with the prior written approval from the Authority/Competent Authority, the same shall be considered as a part of the Project Facility.

“Project Facilities” or “Facilities” means all the facilities and amenities to be provided at the Project Facility by the Operator in terms of this Agreement;

“Project Site” means plot of land measuring 1198 sq. mts. located at Tawara Bypass Chowk, Chintpurni Teh. Amb, District Una on which Shri Chintpurni Sadan, Block-C (Commercial Complex – Hotel & Restaurant) is constructed and which is handed over to the Operator on license basis along with the existing structures, infrastructure facilities, equipments, assets (both movable and immovable), etc. as listed under **Schedule-A**, on **“as is where is”** basis, over which the Project is to be implemented by the Operator at its own cost and risk in accordance with the provisions of this Agreement, Applicable Law, Applicable Permits and Good Industry Practice.

“RBI’s Repo Rate” means the rate at which the Reserve Bank of India lends money to commercial banks in the event of any shortfall of funds, as fixed from time to time.

“Right of Way” means the right to enter into the Project Facility premises and to operate, maintain and manage the Project in accordance with the provisions of this Agreement;

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

“Taxation” or “Tax” means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it;

“Temple Trust” means the Temple Trust Mata Shri Chintpurni Ji;

“Third Party Agreements” means all agreements entered into between the Operator and third Persons such as vendors, etc. for provisioning of any goods or services to the Operator in relation to the Project Facility;

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

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

“Total Project Cost” means the lowest of the following:

- a. the actual capital cost incurred upon completion of the Furnishing Works of the Project.

b. Total Project Cost as set forth in the Financing Agreements.

“Transfer Date” means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement;

“Users” means any person or group of persons/ individuals/ families who uses the Project Facility or any part thereof on payment of User Charges;

“User Charges” means all charges, costs, fees, tariff, rentals and other amounts by whatever name called, payable by the Users to the Operator pursuant to this Agreement for utilizing & availing of various services, facilities and amenities including for room tariffs, purchase of food & beverages at the restaurant, charges for booking and holding for small functions etc. permitted as per Authority’s norms;

“Works” means and includes the Furnishing Works, the operation, maintenance and management and rectifying or/and remedying of defects of the Project Facility including provision of services and facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Agreement.

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (j) the words importing singular shall include plural and vice versa;
- (k) references to any gender shall include the other and the neutral gender;
- (l) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (m) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (n) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (o) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (p) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- (q) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (r) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (s) any reference to build shall mean construct or develop and vice-versa unless the context otherwise requires.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Operator to the Authority and/or the agency or person appointed by the Authority shall be provided free of cost.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.
- 1.3. Measurements and Arithmetic Conventions**
- 1.3.1 All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.
- 1.4. Priority of Agreements and Errors/Discrepancies**
- 1.4.1 This Agreement, and all other Agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement;
 - (b) RFP Document
 - (c) all other agreements, minutes of the meetings and documents forming part hereof;
- i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) and (c) above and (b) shall prevail over all documents in (c) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail; and
- (c) between any value written in numerals and that in words, the latter shall prevail.

HPIDB WEBSITE 19.08.2021

2. Scope of the Project

2.1.1 The scope of the Project (the "**Scope of the Project**") shall mean and include during the Concession Period:

- (i) the carrying out the Furnishing Works for up-grading the Existing Property at its cost and expense, as per the provisions of this Concession Agreement. The Operator shall use new and premium quality materials for furniture, furnishings, fittings & fixtures, etc. equivalent with the standards of at least 2-star category hotel;
- (ii) the carrying out of the O&M and performance of other Obligations as specified in this Agreement;
- (iii) the responsibility for seeking all approvals and licenses for smooth operations of the Project Facility including, but not limited to fire safety; and
- (iv) performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.

2.1.2 The Operator shall at its cost and expense carry out the furnishing, upgradation, operation, maintenance and management of the Project Facility in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and regulations/bye-laws of the Temple Trust. The Project Facility shall be handed over by the Operator to the Authority at the end of the Concession Period or upon the premature termination of this Agreement for any reason, in good and running condition.

2.1.3 The Operator while undertaking Furnishing Works, Operation & Maintenance of the Project, shall adhere to standards equivalent to at least 2-star category hotel, Performance Standards and Maintenance Requirements set forth in **Schedule-E** of this Agreement, statutory requirements, instructions of the Authority, and follow Good Industry Practice where no requirements or standards are prescribed under this Agreement including **Schedule-E** or Applicable Laws or Applicable Permits.

3. Grant of Concession

3.1 The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Operator the concession set forth herein including the exclusive right, authority and authorization during the subsistence of this Agreement, to plan, furnish, upgrade, operate, maintain and manage the Project (the “**Concession**”) for the period specified in Clause 3.4 and enjoy its commercial benefits. The Operator hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Operator to the following:
- (a) To implement and complete the Project in terms of this Agreement;
 - (b) To operate, maintain and regulate the use of the Project Facility by Third Parties;
 - (c) To enjoy complete and uninterrupted access and Right of Way and right to use the Project Site and Project Facility in pursuance of the declaration of license granted in favour of the Operator by the Authority;
 - (d) To have access and liberty to plan, furnish, upgrade, replace, maintain and operate the proposed Project Facility including associated facilities and services during the Concession Period in accordance with the provisions of this Agreement. Any development and installation work done by the Operator in form of any new/ additional/ replaced structures or equipment or appliances or fittings & fixtures, etc. on the Project Site shall be deemed to be the property of the Authority and the Operator relinquishes all its rights in such property in favour of the Authority upon Termination. The Authority on its part, under this Agreement, provides to the Operator, an exclusive license to operate and maintain the Project Facility during the currency of this Agreement as per the terms and conditions contained herein;
 - (e) To determine, demand, levy, collect, enforce, retain and appropriate User Charges periodically and revise the same in conformity with the prevailing market rates as User Charges from Users of the Project Facility. The User Charges with respect to the services provided in Project Facility shall be determined at the sole discretion of the Operator;
 - (f) To bear expenses for engaging and deploying professionally qualified, skilled and semi-skilled staff and personnel at the Project Site for performance of obligations under this Agreement;

- (g) To manage and operate all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Agreement and/or the mutually agreed terms provided by way of directions from the Authority;
- (h) To bear and pay all expenses, costs and charges incurred for fulfillment of all the Operator's obligations as set out under this Agreement;
- (i) To exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for managing, operating, and maintaining the Project.

3.1.3. The Operator shall not be entitled to allow the use of the Project Facility by any other person or for any purpose other than as specified in this Agreement. The Operator shall not carry out the Prohibited Activities as mentioned in **Schedule-F**.

3.1.4. The Operator at its cost and risk has to take all Applicable Permits and Approvals from the Authority/ Competent Authority for activities to be undertaken in the Project Facility and the Authority shall in no way be liable for the same. Nevertheless the Authority without any binding obligation shall provide any assistance upon written request from the Operator.

3.1.5. Nothing contained herein, including the act of granting concession and permission to operate the Project Facility shall vest or create any proprietary interest in the Project Facility or any part thereof including the land, any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of the Operator or any other person claiming through or under the Operator. The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project Facility or the land in any manner. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.1.6. It is hereby made clear that in the event of Termination of this Agreement, the Agreement Period/ Concession Period shall mean and be limited to the period commencing from the Agreement Date and ending with the Transfer Date.

3.2 Acceptance by the Operator

3.2.1. In consideration of the rights, privileges and benefits conferred upon by Authority and other good and valuable consideration expressed herein, the Operator hereby accepts, agrees and undertakes to perform/ discharge all its obligations in accordance with the provisions hereof.

3.3 Actions in Support of the Operator

3.3.1. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.

- 3.3.2. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement.
- 3.3.3. The Authority shall provide assistance and recommendations to the Competent Authorities, in support of the Operator's applications for Applicable Permits/ Approvals that may be needed from time to time for the implementation of the Project; provided that the Operator has made the requisite applications and is in compliance with the necessary conditions at its cost for the grant of such Applicable Permits, clearances etc.

3.4. Concession Period

- 3.4.1 Subject to and in accordance with the provisions of this Agreement, the Concession set forth in Clause 3.1 is hereby granted by the Authority to the Operator for a period of **10 (Ten) years** commencing from the Effective Date including any extension thereof, during which the Operator is authorized to execute and implement the Project in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall be inclusive of the Furnishing Period.
- 3.4.2 Not less than 3 (three) months prior to the expiry of the initial Concession Period of 10 (ten) years, upon written request from the Operator seeking extension in Concession Period, the Authority may in its sole discretion consider such request of the Operator subject to the conditions that the Operator is not in default of any of its obligations under the Agreement, is running the Project in a satisfactory manner and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project. Provided however, such extension of Concession Period shall not exceed a period of **5 (five) years**. Provided however, any extension in Concession Period in accordance with this Sub clause 3.4.2 shall be subject to same terms and conditions as contained in this Agreement.
- 3.4.3 It is hereby made clear that:
- i. In the event of the Concession Period being extended by the Authority beyond the said period in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended; and
 - ii. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination.
- 3.4.4 At the end of the Concession Period or early termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site and the Project Facility with all the fittings & fixtures and assets as associated with the Project on '**as is where is basis**' shall revert to the Authority as a "**going concern**" without any obligation of the Authority to pay or adjust any consideration or other payment to the Operator.

3.5 Furnishing Period

3.5.1 The period for carrying out and completing the Furnishing Works in respect of the Project Site handed over to the Operator shall be **04 (Four) months** commencing from the Effective Date (the “**Furnishing Period**”) during which the Operator shall be mandatorily required to :

- i. at its cost complete all the Furnishing Works at the Project Site and make it fully operational in all respects so as to commence full Commercial Operations;
- ii. obtain all the Applicable Permits at its cost that are required for commencing the Commercial Operations and keep all such Applicable Permits and Approvals in full force and effect during the Concession Period.

3.5.2 The Operator may undertake Furnishing Works of the Existing Property by itself or through one or more Sub-Contractors possessing requisite expertise/ skill; but in either case, the Operator shall remain solely responsible to meet the Scope of the Project as contained in this Agreement. During the execution of the Furnishing Works, the Operator shall adhere to the Performance Standards as mentioned in the **Schedule-E** to this Concession Agreement. In case no Performance Standards or statutory requirements are specified for a particular work, then the same shall be undertaken as per the directions of the Authority or Good Industry Practice.

3.5.3 In the event that Furnishing Works are not completed within the period set forth in Clause 3.5.1 above, for any reason other than Force Majeure or reasons attributable to the Authority, the Operator shall, pay to the Authority Damages for delay for an amount equivalent to i.e. 0.05% of the Performance Security per day for each day of delay or part thereof beyond the scheduled date of completion of Furnishing Works (i.e. beyond Furnishing Period) until all works are completed and Commercial Operations in respect of the entire Project Facility can be commenced successfully. Provided that nothing contained in this Sub clause 3.5.3 shall be deemed or construed to authorize any delay by the Operator in completing Furnishing Works.

3.5.4 In the event that Commercial Operations in respect of the entire Project Facility does not occur within 60 (sixty) days from the originally stipulated Furnishing Period in Sub clause 3.5.1 above, the Authority shall be entitled to invoke the Performance Security and to terminate this Agreement for Operator Event of Default in accordance with the provisions of Article 15 hereof. Provided that instead of terminating this Agreement, the Authority may at its sole option extend the time for achieving completion on such terms and conditions as it deems fit in its sole discretion and subject to payment of Damages at the enhanced rate as determined by the Authority.

3.5.5 Notwithstanding anything to the contrary contained in this Agreement, whether or not the Operator has completed the Furnishing Works and put the Project Facility into Commercial Operations pursuant to achieving Commercial Operations Date, the obligation to make payment of first Annual Concession Fee by the Operator shall commence on the first day of the 5th (fifth) month from the Effective Date, therefore, the first payment of the Annual Concession Fee shall be made on the first day of the 5th (fifth) month from the Effective Date. In the event, the Operator commences Commercial Operations on an earlier date, then the first payment of the Annual

Concession Fee shall be made on such date/ COD.

- 3.5.6 In the event, the Operator has been permitted in writing by the Authority to make any structural changes/ alterations/ modifications/ additions to the existing structures/ new structures at the Existing Property/ Project Facility, the Operator shall provide to the Authority a certificate issued by a registered structural engineer to certify the durability, safety and soundness of the changes/ alterations/ modifications/ additions made.

3.6 Commercial Operations Date (COD)

- 3.6.1 The Project Facility or part thereof shall be ready for Commercial Operations upon completion of Furnishing Works and obtaining of all Applicable Permits including consent to operate from the Competent Authority for commencing operations, at the entire Project Facility or part thereof. The Operator shall intimate (atleast 7 days prior) in writing to the Authority the precise date from which it intends to commence Commercial Operations at the Project Facility or part thereof and such date shall be the “**Commercial Operations Date**” whereupon the Operator shall be entitled to commence Commercial Operations of the Project Facility or part thereof, in terms of this Agreement.
- 3.6.2 In the event, it is found that the Operator has wrongly reported to the Authority precise Commercial Operations Date/ date of commencement of Commercial Operations at the Project Facility or any part thereof whereby the Operator had commenced commercial utilization of the Project Facility or any part thereof for provisioning of facilities and services to the Users and charging, demanding, collecting and appropriating the User Charges, on an earlier date than reported to the Authority, it shall be liable to pay Damages @ 0.5% (zero point five percent) of the amount of Performance Security for every day wrongly reported by the Operator to the Authority. Additionally, the Operator shall also be required to pay the Annual Concession Fee on a pro-rata basis for the wrongly reported period.

4. Consideration of the Contract

4.1. Annual Concession Fee

- 4.1.1. In consideration of the rights, privileges and interests granted by the Authority to the Operator in terms of this Agreement, the Operator shall pay to the Authority a fixed amount of fee annually as quoted by the Selected Bidder/ Operator and accepted by the HPIDB subject to enhancement in terms of Clause 4.1.2 below (the “**Annual Concession Fee**”). Any taxes including GST applicable on the Annual Concession Fee shall be paid separately by the Operator to the Authority.
- 4.1.2 The Annual Concession Fee for the first year of Concession shall be Rs...../- (Rupees only) (plus GST at the applicable rate). The Annual Concession Fee shall escalate at the rate of 5% (five percent) annually over the previous value every year.
- 4.1.3 The first Annual Concession Fee shall be due and payable on the first day of the 5th (fifth) month from the Effective Date or from the date of commencement of Commercial Operations of the Project Facility or any part thereof in terms of Clause 3.6, whichever is earlier, and accordingly, the Operator shall deposit the Annual Concession Fee on or before the same date every year.
- 4.1.4 The payment of Annual Concession Fee shall be made into the Authority’s Designated Bank Account by way of online transfer of funds (as per the particulars thereof to be intimated by the Authority). All taxes (including GST), levies and charges as applicable and payable by the Authority to GoI or to any other government instrumentality with respect to the collection of the Annual Concession Fee shall have to be paid by the Operator along with and in addition to the payment of Annual Concession Fee. For the avoidance of doubt, it is clarified that the Authority shall be entitled to receive Annual Concession Fee as well as all applicable taxes from the Operator, whether payable by the Authority or the Operator.
- 4.1.5 In the event of delay up to four weeks in payment by the Operator, the Operator shall be required to pay to the Authority, interest at the rate equal to RBI’s Repo Rate + 4% (four percent) per annum. In the case of delay beyond such four weeks, it shall be considered as an Operator’s Event of Default.

5. Conditions Precedent to the Agreement

5.1 Conditions Precedent

5.1.1. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 5.1 (the “**Conditions Precedent**”).

5.2 Conditions Precedent of the Authority

5.2.1. The Operator may, upon signing of the Agreement, by notice require the Authority to satisfy the Conditions Precedent as set forth in this Clause 5.2 within a period of **30 (thirty) days** from the Agreement Date, and the obligations of the Authority hereunder shall be deemed to have been performed when the Authority shall have :

- (a) issued the Declaration of License in favour of the Operator in terms of Clause 10.1;
- (b) provided to the Operator the access and Right of Way to the Project Site along with all the infrastructure constructed thereon and facilities available thereat on ‘*as is where is*’ basis free of encumbrances, as demarcated in **Schedule-A**, in accordance with the provisions of Clause 10.1;
- (c) appointed the Nodal Officer in terms of Article 13;
- (d) prior to handing over of the Project Site, on a mutually agreed date, the Nodal Officer appointed by the Authority along with the Project Manager of the Operator shall jointly inspect the Project Site and the existing facility thereon and thereat, to prepare and execute an inventory and records of the existing structures, assets, materials and utilities on the Project Site i.e. existing Shri Chintpurni Sadan, Block-C (the “**Joint Inventory - Site**”), and shall further record their quality, condition, functionality, as tabulated below. The Joint Inventory – Site shall be prepared in two counterparts and each counterpart duly signed and stamped by both the Parties. Each Party shall retain one counterpart. The copy of the Joint Inventory – Site shall be appended under **Schedule-H** to this Agreement.

List of Inventory and condition of the same :

<i>S. No.</i>	<i>Items Description</i>	<i>Unit</i>	<i>Qty</i>	<i>Location</i>	<i>Remarks on the condition of the handed over items</i>

5.3 Conditions Precedent of the Operator

5.3.1. The Conditions Precedent required to be satisfied by the Operator within a period of **30 (thirty) days** from the Agreement Date shall be deemed to have been fulfilled when the Operator shall have:

- (a) opened the project specific Designated Bank Account in a Nationalized/ Scheduled Bank in Shimla;
- (b) made applications at its own cost for any approval etc. that may be required for commencing Furnishing Works at the Project Site;
- (c) delivered to the Authority a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof;
- (d) appointed a qualified and professionally experienced person (having prior experience of managing similar properties) as its Representative who shall be designated as the Project Manager;
- (e) carried out joint inspection of the Project Site for preparation of Joint Inventory - Site.

5.4 Obligations to satisfy Condition Precedents

5.4.1. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above. Upon satisfaction of the Conditions Precedent by each Party, the other Party shall forthwith issue a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).

5.4.2. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

5.5 Non-Fulfillment of the Conditions Precedent

5.5.1. In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 5.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, the Authority shall pay to the Operator Damages of an amount equivalent to i.e. 0.01% of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 5% of the Performance Security.

5.5.2. In the event that (i) the Operator does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 5.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the Conditions Precedent under Clause 4.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Operator shall pay to the Authority, Damages of an amount equivalent to i.e. 0.05% (zero point zero five per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 10% of the Performance Security.

- 5.5.3 Once the maximum Damages have been reached and the Operator has not fulfilled all the Conditions Precedent, the Authority has not extended or waived them fully or partially, the Authority shall be entitled to terminate this Agreement without being liable in any manner whatsoever to the Operator or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Operator.
- 5.5.4 In the event that the Project Site has been delivered to the Operator on the '*as is where is basis*' prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site and Project Assets shall immediately revert to the Authority, free and clear from any Encumbrances on '*as is where is basis*', irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.
- 5.5.5 Notwithstanding anything contained in this Clause, the Parties may mutually decide to extend the time period for the fulfilment of the Conditions Precedent.

6. Obligations of the Operator

6.1. General Obligations

- 6.1.1. Subject to and on the terms and conditions of this Agreement, the Operator shall, at its cost and expense, procure finance for and undertake the furnishing, equipping, upgrading, operating and maintaining the Project Facility and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) including bye-laws, rules, regulations, instructions and guidelines of the Authority & Competent Authority, any directions of the GoHP or GoI or Court of law, in the performance of its obligations under this Agreement.
- 6.1.3. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Operator shall, in discharge of all its obligations under this Agreement, conform with and adhere to the principles of Good Industry Practice, applicable from time to time. The Operator shall bear the cost/ expenditure to be incurred on the Furnishing Works and O&M of the Project Facility during the Concession Period. The Operator shall undertake completion of all Works by deciding optimum utilization and quality as per Good Industry Practice to optimize operational efficiency and esthetic quality of the Project.
- 6.1.4. The Operator shall take prior written approval of the Authority in case any major repairs, alteration or change or improvement in the structure(s) of the Project Facility is proposed/ required to be made by the Operator during the Concession Period, at its own costs and expense. However, in case of any minor maintenance works/ repairs, the Operator shall carry out the same at its own costs and expense with prior written intimation to the Authority.
- 6.1.5. The Operator shall take approval from the Authority prior to the finalisation of the name of the Project. Unless the name negatively affect public sensitivities, the Authority shall not unreasonably withhold approval of the name proposed by the Operator.
- 6.1.6. The Operator shall ensure that there is no adverse impact to the environment, flora and fauna & ecology of the area on account of carrying out of activities at the Project Facility. The garbage & sewer shall be disposed off in an environment friendly manner in accordance with Applicable Law, Applicable Permits and guidelines issued by any government agency of GOI or GoHP or the NGT or the Court of Law.
- 6.1.7. The Operator shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:
 - (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;

- (b) procure, as required, the appropriate proprietary rights, licenses, insurances, agreements and permissions for materials, methods, processes and systems used or incorporated into operations of the Project. The Operator shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the Vendors for various installations;
- (c) not to damage any other infrastructure or any other utility developed by the Authority and handed over or in respect of which right to use or access is provided to the Operator, or any other utilities developed and maintained by any other authority or person. In case of any such damage, to undertake the repair and also to pay for any losses that is incurred by the Authority or any authority, agency or any other person, as the case may be;
- (d) not make any changes in the structure, facade of the Project Facility while undertaking Furnishing Works or during O&M Period without the prior written approval of the Authority. The Operator shall have the option to make changes within the existing structures/ floors with good quality furnishing materials, while maintaining the aesthetics of the Project Facility;
- (e) ensure and procure that the Operator and its sub-contractor(s), agents, employees and personnel shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any encumbrances, adverse rights or third party rights on the Project Site and also to ensure that the Authority is not adversely affected in any manner;
- (h) make payment of Annual Concession Fee plus GST to the Authority in a timely manner as per provisions of this Agreement;
- (i) be responsible for payment of all taxes, GST, duties, charges, levies including stamp duty and any other statutory charges as may be required to be paid as per statutory requirements from time to time to the GoI, GoHP or local authority;
- (j) provision for availability of personnel on 24x7 basis in Reception Area for providing assistance to the guests staying in the Project Facility, with an ability to communicate in English and Hindi;
- (k) provide all assistance to the Authority/ Temple Officer/ Nodal Officer as may be required for the performance of their duties and services;
- (l) ensure that no goods are stored that are not permitted by law including those of hazardous and explosive in nature that may cause damage to the Project

Facility. The Operator shall be liable or responsible for destruction or damage to the Project Facility on account of any acts of commission or omission by it;

- (m) procure at its own costs, expenses and risk all the services necessary for the operations of the Project Facility including without limitation electricity, water, other services, materials, sewerage, communication lines, sanitation, garbage disposal and pay applicable utility expenses, charges/ rates, including penalties for default in payment, in relation to the use thereof, in the Operations & Maintenance of the Project Facility by the Operator and indemnify/ keep indemnified the Authority in this respect and ensure avoidance of any disruption thereof due to disconnection or withdrawal of any of the aforesaid facility/ies. The Operator shall also make adequate fire safety arrangements;
- (n) ensure that all the furniture, fixtures, equipment etc, to be made part of the Project Facility shall be of high standards and premium quality as per Good Industry Practice equivalent to atleast 2- star category hotel norms/ guidelines issued by the Ministry of Tourism, Govt. of India and such standards are maintained throughout the Concession Period;
- (o) ensure that all the fixtures, furniture and equipment shall be maintained in a proper manner as and if any fitting or fixture, equipment or furniture is found in dirty/ poor/ depleted condition then the same shall be cleaned/ repaired/ replaced (as the case may be) by the Operator at its own cost. Nodal Officer at any time, may instruct the Operator to replace / repair the fixtures, equipment, furniture or any other moveable or immovable assets, if the same are found to be in a poor or depleted condition;
- (p) shall obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (q) shall have the right to erect electronic hoardings and advertisement boards, as per the Applicable Laws after prior approval from Authority, in the Project Facility and generate revenue from it;
- (s) provide adequate security, watch and ward service at the Project Facility to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (t) be responsible for all liabilities arising out of operation, maintenance & management of the Project. The Operator shall plan, organize and execute the works so that there is least disruption to the operations and minimal inconvenience to the neighboring facilities. The Authority shall assist the Operator in all respects with reference to such works, but the assistance or denial thereof shall not release the Operator from its obligations and the Authority shall not be deemed to undertake any such obligation at its own;
- (u) shall have the option to advertise the Project in newspapers or through any other mode of communication at own cost;

- (v) take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;
- (w) be solely and exclusively responsible for the recruitment, transportation, accommodation, payment of the salaries, wages, allowances and other payments to its employees and cost incidental thereto and all taxes, charges, levies, duties payable under the Applicable Laws arising from the respective terms and conditions of employment of its personnel deployed on the Project Facility under or through whatever legal relationship. The Operator shall be further responsible for obtaining all necessary clearance from the Competent Authorities and compliance with all local and other Applicable Laws and regulations pertaining to the employment of labour. The Operator shall ensure that all labour laws, rules and regulations are followed and that the Operator shall be the primary employer of the staff, personnel, labour employed by it or by its Sub-Contractor(s) on the Project Facility without any liability of the Authority;
- (x) shall at all times during the Concession Period shall maintain an Asset/ Inventory Register containing the list of all movable and immovable assets as brought and installed by the Operator into the Project. The Operator shall handover the associated assets to the Authority at the time of transfer of the Project. At any time during the Concession Period, any fitting or fixture/ equipment/ apparatus/ appliances forming part of the Joint Inventory – Site is replaced or removed by the Operator, then the same shall be replaced with a fitting or fixture/ equipment/ apparatus/ appliances which is equal to or superior in quality; further, the Operator shall handover such removed/ replaced fitting or fixture/ equipment/ apparatus/ appliances to the Nodal Officer/ Authority;
- (y) make payment of charges for use of STP to the Authority at the rate fixed by the Authority from time to time; at present the charges are Rs.65,000/- per month. The Operator shall also be liable to make payment of pollution control charges fixed by the Authority from time to time; at present the charges are Rs.30,000/- per month; and
- (z) hand over the Project Facility in operational and good condition on the date of termination of Concession to the Authority, in accordance with the provisions thereof.

6.1.8 The Operator warrants that it shall carry out its obligations using all due skill, care and diligence expected of an operator in executing a work of this nature and magnitude in a proper workmanlike and careful manner with properly equipped facilities and premium quality non-hazardous materials, in accordance with the provisions of this Agreement.

6.1.9 The Operator shall neither undertake nor permit the Users and visitors to the Project Facility to undertake any of the Prohibited Activities.

6.1.10 If at any time during the performance of this Agreement, the Operator or its employees are found to be guilty of unlawful act/ conduct or misbehavior or mishandling of/ with any member of public visiting the Project Facility or any authorized representative from the Authority, or is found to be incompetent or negligent in performing his/their duties or if in the opinion of the Authority, it is undesirable for such persons to be employed by the Operator in the work at the Project Facility, the Operator, if so directed by the Authority or his authorized representative shall forthwith remove such persons(s) from the work at the Project Facility and/or the Authority immediately. The Nodal Officer shall ensure strict compliance with such instructions of the Authority.

6.2. Obligations relating to Other Agreements

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

6.2.2. The Operator may undertake operation of the Project Facility by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Operator shall remain solely and fully responsible to meet the Scope of the Project as mentioned under Article 2.

6.2.3. The Operator shall submit to Authority the drafts of all Third Party Agreements or any amendments or replacements thereto for its review and comments, and Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Third Party Agreement or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever. All the Third Party Agreements shall be co-terminus with the validity of the Concession Period i.e. upon termination of this Agreement, the Third Party Agreement(s) so granted by the Operator shall also stand terminated. Provided however, the Third Party Agreement(s) shall not contain any provision which is directly or indirectly violative of the terms and conditions of this Agreement and/ or causes any material adverse effect on the interests of the Authority under this Agreement.

6.3. Access for Supervision

6.3.1 The Operator shall, at all reasonable times and on reasonable notice, afford access to the Project Facility following grant of possession thereof to the Temple Officer, Nodal Officer, representative(s) of or any other Person(s) duly authorized by the Authority

and/ or the Competent Authority concerned with safety, security or environmental protection to inspect the Project Facility thereon and to investigate any other matter within its authority and the Operator shall further afford reasonable access to the Project Facility to such Persons/ Nodal Officer/ representative(s) of the Authority and the Competent Authority, necessary to carry out their respective duties and functions.

- 6.3.2 The Persons obtaining access to the Project Facility shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the Project consistent with the purpose of the Person gaining such access.

6.4. Obligations relating to Environmental Measures

- 6.4.1. The Operator shall take all reasonable steps to protect the environment (both on and off the Project Facility) and to limit damage and nuisance to people and property in the vicinity. The Operator shall dispose off the waste/ garbage/ sewerage as per Applicable Laws and ensure that the Users do not litter in and around the Project Facility.
- 6.4.2. The Operator shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, including its officers, employees and agents from and against any and all demands, claims, damages, penalties, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Operator to discharge its obligations under this Article inter alias, and to comply with the provisions of health, safety and environmental laws as applicable;

6.5. Obligations relating to clearance of Project Facility

- 6.5.1 During the execution of the any improvement or repair works, the Operator shall keep the Project Facility free from all unnecessary obstruction, and shall store Operator's Equipment or surplus materials in a manner that causes least inconvenience to Users or dispose of such Operator's Equipment or surplus materials. The Operator shall clear away and remove from the Facility any wreckage or rubbish no longer required.

6.6. Safety and Security

- 6.6.1 The Operator shall comply with all safety regulations applicable, access arrangements and operations on the Facility. The Operator shall be responsible in the operations and any other work, to take all precautions to ensure safety of the staff, laborers and public.
- 6.6.2 The Operator shall be responsible at its cost, safety and security of all the Project Assets, both movable and immovable at the Project Facility by deploying adequate security staff round the clock, CCTV cameras at appropriate locations on all the floors, etc. Unless otherwise stated in this Agreement:
- i. The Operator shall be responsible for keeping unauthorized persons off the Project Facility and preventing encroachment on the Project Facility during the Concession Period.
 - ii. Authorized Persons shall be limited to the employees of the Operator, Nodal Officer and persons authorized by the Authority.

- 6.6.3 In the event of an accident, the Operator shall, by most expeditious means, inform the concerned Civil and Police Authorities, and also the Authority. The Operator's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Facility of such accident intact, until completion of all legal formalities. The Operator shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Facility. If any portion of the Project Facility suffers any damage, the Operator shall, with the consent of the Authority, arrange for the repair and rectification thereof.
- 6.6.4 The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practice).
- 6.6.5 Any communication to the media made by the Operator shall provide only such enough information as to satisfy the public concern and the Operator shall make no admissions nor accept any liability in such communications, without consulting the Authority.
- 6.6.6 The Operator shall indemnify, defend and hold harmless the Authority, during the term of this Agreement, from and against all liabilities, costs, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Operator due to such any accidents.

6.7. Insurance Requirement

- 6.7.1 The Operator shall effect and maintain at its own cost, during the Furnishing Period and the O&M Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “**Insurance Cover**”). The Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Operator during the Completion Period. The Operator shall procure that in each insurance policy, the Authority shall be a co-insured.
- 6.7.2 Without prejudice to the provisions contained in Clause 6.7.1, the Operator shall, during the Concession Period, purchase and maintain Insurance Cover including but not limited to the coverage of following:
- a) Loss, damage or destruction of the Project Facility and Project Assets including assets handed over by the Authority to the Operator on account of fire, theft, Acts of God, etc. at the replacement value. This insurance shall be obtained by the Operator in the name/ favour of the Temple Trust;
 - b) Comprehensive third party liability insurance including injury or death to the persons who may enter the Project Site by accident or otherwise;
 - c) Workmen's compensation insurance, ESI, Medi-claim, Personal Accident insurance, etc.;

- d) The Operator's general liability arising out of the Concession; and
- e) Any other insurance that may be necessary to protect the Operator, its employees and its assets and the Authority, its employees and agents engaged in or connected to the Project and the Project Site including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

6.7.2 Atleast 45 (forty-five) days prior to commencement of the O&M Period, the Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

6.7.3 All insurances obtained by the Operator in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Operator shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Operator to the Authority.

6.7.4 All insurance policies in respect of the insurance obtained by the Operator pursuant to this Clause 6.7 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

6.7.5 The Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance

6.7.6 The proceeds from all insurance claims in respect of coverage at Clause 6.7.1 (a) & (e) shall be applied by the Operator for any necessary repair, re-construction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

6.7.7 The Operator expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Operator's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

6.8. Compliance with all applicable labour laws

The Operator shall be solely responsible for compliance with all applicable labour laws, Payment of Wages Act 1936, The Employees Provident Fund and Miscellaneous Provision Act 1952, The Workmen's Compensation Act 1923, Works Contract Act, Minimum Wages Act 1948, Industrial Dispute Act 1947, The Contract Labour (Regulation and Abolition) Act 1970 and other relevant Central / State Government Rules etc.

6.9 Redressal of Public Grievances

6.9.1 The Operator shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**") at the Reception. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Operator at Project Site so as to bring it to the attention of all the Users.

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

6.9.3 The Operator shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Operator to the Complainant via email or sms.

6.9.4 Within 7 (seven) days of the close of each quarter, the Operator shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Operator to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Operator shall consider such advice and inform the Authority of its decision thereon.

6.10 Levy and Appropriation of User Charges

6.10.1 On and from the COD, the Operator shall have the sole and exclusive right to demand, collect and appropriate tariffs, fees, charges, etc. in whatever shape as per the market driven rates for the use of the facilities provided by the Operator in accordance with the provisions of this Agreement at the Project Facility (the "**User Charges**"). The Operator shall also be responsible for providing security services, housekeeping and horticulture services for the Operations & Maintenance of the Common Areas.

6.10.2 The Authority expressly recognizes that the right of the Operator to levy, demand, collect, retain, and to appropriate User Charges in accordance (i) with the terms of this Concession Agreement; and (ii) to exercise all rights and remedies available under Applicable Law and under this Concession Agreement for the recovery of such User Charges.

6.11 Designated Bank Account

6.11.1 The Operator shall, prior to the Effective Date, open and establish an account with a Nationalized/ Scheduled Bank located in Chintpurni town/ Una town into which all the inflows, receipts and revenues generated from the Project including User Charges, are collected and deposited by the Operator shall be credited by the Operator on a daily/ weekly/ monthly basis.

6.11.2 Irrespective of the inflow of revenues into the Designated Bank Account, the Operator shall continue to discharge its obligation in respect of payment of Annual Concession Fee to the Authority without any failure from any of its other sources.

6.12 Electricity and Water

6.12.1 The Operator shall be required to obtain electricity and water connections at its cost.

6.12.2 The Operator shall be required to pay to the concerned department, the cost or charges for the units consumed in Project Facility, as measured by the meter. The cost or charges per unit of electricity shall be as applicable and/ or the prevalent rate per unit. Operator shall be required to pay for electricity as and when the bill is received by the concerned Department/ authority or whenever it is due.

6.12.3 The Operator shall ensure timely payment of bills related to electricity, water, taxes and other bills. In the event of default committed by the Operator in making payment of any such bills and as a result some penalty or penal interest is levied or charged by the concerned authority/ department, the Operator shall be liable to bear the same without any responsibility of the Authority.

6.12.4 The Operator can obtain additional power backup from the diesel genset installed by the Temple Trust common for all the 3 (three) Sadans/ Blocks, subject to payment of per unit charges fixed by the Temple Trust from time to time.

6.13 Change in Ownership

6.13.1 The aggregate share/ shareholding of the Joint Venture Members in the subscribed and paid up equity share capital of the Operator shall be not less than:

- i 100% (one hundred percent) until the 5th (fifth) anniversary i.e. lock in period of the Commercial Operation Date of the Project.
- ii 51% (fifty one percent) for a period until the end of Concession Period.

6.13.2 In case of Joint Venture, the Lead Member of the Joint Venture, they shall collectively hold 100% (hundred per cent) share in the incorporated JV/ Operator at

all times until the fifth anniversary of the Commercial Operations Date of the Project with Lead Member holding atleast 51% (fifty-one percent) and the other Member 26% (twenty-six percent) during the Lock in Period. Provided further that, the Lead Member of the Consortium shall continue to maintain a minimum equity shareholding of 26% (twenty six percent) in the stipulated subscribed and paid up equity share capital of the Operator at all time until the end of Concession Period with both the Members holding atleast 51% till the end of Concession Period.

- 6.13.3 In case of Operator was a single entity Selected Bidder, such Bidder shall maintain 100% (one hundred percent) equity in the Project till 5th Anniversary of the Commercial Operations Date. However, he can dilute it to a level below 100% (one hundred percent) at any time after the 5th Anniversary of the Commercial Operations Date but not below 26% during the balance Concession Period.
- 6.13.4 At no stage during the Lock in Period shall any change in the shareholding pattern be made by the Consortium Members and/or Selected Bidder without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority.
- 6.13.5 In case any such change in composition of the Joint Venture/ Operator has been agreed upon, the parties would be required to submit a revised Memorandum of Understanding to the Authority.

7. Obligations and Powers of the Authority

7.1 General Obligations

- 7.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 7.1.2 The Authority agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) the Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Clause 5.2 free from all Encumbrances on *‘as is where is basis’* to the Operator and issuing of Declaration of License;
 - (b) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator in procuring Applicable Permits or any other assistance that may be required from any Government Instrumentality for implementation and operation of the Project;
 - (c) upon written request from the Operator, assist the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water at rates and on terms no less favourable to the Operator than those generally available to commercial customers receiving substantially equivalent services;
 - (d) extend the assistance of its good offices on a reasonable effort basis to assist the Operator in the provision of electricity and water;
 - (e) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (f) to convey its decision expeditiously on the request of the Operator with regard to any decision sought on carrying out of any alterations, improvements, major repairs, maintenance works, etc., any time during the Concession Period. If some specified time period has been specified in the Agreement for the Authority for responding then within such specified time limit and where no time limit has been specified then within a period no longer than 15 (fifteen) days. However, in the case of emergency and urgent repairs, the Authority should revert within shortest possible time so that the Project Facility or any part thereof and the Users are not subject to any risk due to any delay in permission;
 - (g) not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the upgradation, completion, Operations & Maintenance of the Project Facility except as may be provided in this Concession Agreement

- (h) take appropriate action in accordance with the provisions of this Agreement, in case of faults, defaults, defects in operation, fraud investigated or grievances received against the Operator;
- (i) appoint any other competent person/ firm as Expert, to investigate any defects or deficiency in the Project Facility and to assist the Nodal Officer in monitoring the Operations & Maintenance of the Project by the Operator; and
- (j) support, cooperate , facilitate and guide the Operator in the implementation of the Project in accordance with its objective.

7.2 Powers of the Authority

7.2.1 The Authority or its Nodal Officer or Temple Officer or Authorized Representative(s) shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper implementation of the Project, including, (without limitation):

- i. Grant all approvals and permissions to the Operator;
- ii. Review compliance to the O&M Requirements by the Operator;
- iii. Review compliance of Performance Standard requirements by the Operator;
- iv. Approve any other matter which it deems necessary for upgradation, operation and maintenance of Project Facility;
- v. Impose penalties on the Operator as stipulated under this Agreement;
- vi. Review matters arising out of complaint register.

8. Representations and Warranties

8.1 Representations and Warranties of the Operator

The Operator represents and warrants to the Authority that:

- (a) it is duly set up, organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the adequate financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement and the Operator shall always during the Agreement Period, provide correct information to the Authority;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association / Bye Laws and/or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to

perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) no order has been made and no resolution has been passed for the winding up of the Operator or for a provisional liquidator to be appointed in respect of the Operator and no petition has been presented and no meeting has been convened for the purpose of winding up the Operator. No receiver has been appointed in respect of the Operator or all or any of its assets. The Operator is not insolvent or unable to pay its debts as they fall due.
- (l) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (m) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (n) All rights and interests of the Operator in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Operator or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Operator subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement; and
- (o) it shall not novate or assign the Agreement and all or any rights and obligations arising therefrom to any party without any written approval from the Authority.

8.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Operator that:

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

- (b) it has taken all necessary action under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Operator's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (h) it has good and valid right for operation of the Project, and has power and authority to give license of the rights to the Operator; and
- (i) upon the Operator completing the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the period of Concession, interfere with peaceful enjoyment of the Project Facility by the Operator, except in accordance with the provisions of this Agreement.

8.3. Disclosure

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

9. Performance Security Bank Guarantee

9.1. Performance Security

- 9.1.1 The Operator shall submit to the Authority, for the due and punctual performance of its obligations hereunder during the Concession Period, to the Authority, within 21 (twenty one) days of the date of NOA, a Performance Security of **Rs.50 lakhs (Rupees Fifty Lakhs only)**, in the form of an unconditional and irrevocable Bank Guarantee in favor of The Commissioner (Temple) Temple Trust Mata Shri Chintpurni, payable at Una, Himachal Pradesh; the Bank Guarantee shall be prepared and submitted as per the format given in **Schedule-D** of this Agreement.
- 9.1.2 Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.
- 9.1.3 The Performance Security shall be kept valid and in force for the entire duration of the Agreement Period plus 90 (ninety) days, through periodical renewals, prior to the expiry of the subsisting Performance Security. In the event the Operator fails to provide the renewed/ extended performance security prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Operator to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Operator Event of default in terms hereof. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne by and paid by the Operator.

9.2. Appropriation of Performance Security

- 9.2.1. In the event, the Operator is in default or breach of the due, faithful and punctual performance of its obligations or failure to meet Conditions Precedent under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or otherwise against the Operator under this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of obligations/ services within the time period specified herein, or in respect of any dues, demands, damages or claims against the Operator.
- 9.2.2 The decision of the Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator and the Operator specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Concession Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.

9.2.3 In the event of encashment of the Performance Security by the Authority, in full or part, the Operator shall within 15 (fifteen) days of receipt of the encashment notice from the Authority provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply mutatis mutandis to such fresh Performance Security. The Operator's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Operator, which shall entitle the Authority to terminate this Concession Agreement in accordance with the provisions hereof.

9.3. Release of Performance Security

The Performance Security Bank Guarantee (if subsisting) shall be released to the Operator 90 (ninety) days after Transfer Date. Provided however, the Authority shall be entitled to recover any amounts due or receivable from the Operator under this Agreement, before the Performance Security is duly discharged and released to the Operator.

10. Rights and Title over the Project Facility

10.1. Transfer of Project Site on License

10.1.1. The Authority shall execute a “**Declaration of License**” in respect of the Project Site as delineated in **Schedule-A**, in favour of the Operator in the format prescribed in **Schedule-C** pursuant to completion of Joint Inventory – Site thereby granting to the Operator in accordance with this Agreement, leave and license rights in respect of all the existing land underlying the area of Existing Property (*i.e. Shri Chintpurni Sadan, Block-C (Commercial Complex- Hotel & Restaurant)*) along with all moveable and immovable assets thereon/ thereat, (the “**Licensed Premises**”), on an “*as is where is*” basis, free from all Encumbrances, to operate and maintain the said Licensed Premises (the “**License**”), together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or Project Premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. The Declaration of License shall run co-terminus with this Agreement/ Concession Period.

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

10.1.3. It is expressly agreed that mining rights of any kind do not form part of the rights granted to the Operator under this Agreement and the Operator hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.2. Use of the Project Site, Project Facility and Peaceful Possession

10.2.1 The Operator, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site, the Existing Property and the Project Facility during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. The Operator shall not use the Project Site, the Existing Property or Project Facility for any other purpose not intended herein.

10.2.2 The Operator shall confine its operations to the Project Site, the Existing Property and the Project Facility. The Operator shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighboring areas or otherwise cause any interference with/ to the employees, representatives and agents of the Authority. The Operator shall take utmost care in ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to occupiers of any building etc. (residential or otherwise) in the neighborhood or obstructs the passage in adjoining areas of the Project Site in any manner.

10.2.3 The Operator is required to introduce and adopt at all times, appropriate measures for

safety, security and orderliness on the Project Site premises granted to the Operator.

10.3 Access rights of the Authority and others

- 10.3.1 The Operator shall allow free access to the Project Site at all times to the Temple Officer, Nodal Officer and authorized representatives of the Authority, and to the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such person's reasonable assistance necessary to carry out their respective duties and functions.

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11. Operations and Maintenance (O&M)

11.1. Commencement and duration

The O&M of the Project shall commence from the date of grant of Permission to Commence Operations i.e. the Commercial Operations Date/COD and terminate at the Transfer Date (the “O&M Period”).

11.2. Obligations of the Operator during O&M Period

11.2.1 During the O&M Period, the Operator shall at its risk, cost and expense, operate and maintain the Project Facility in accordance with this Agreement and if required, modify, repair or otherwise make improvements in the Project Facility to comply with the provisions of this Agreement, Applicable Laws, Applicable Permits, and conform to the Performance Standards and Maintenance Requirements as mentioned in **Schedule-E**, and Good Industry Practice. The obligations of the Operator (*at its cost and expense*) hereunder shall include:

- (i) carrying out all the maintenance (periodic preventive or routine maintenance) works and repairs of all Project Assets, Project Facilities, services, etc. at the Project Facility and all its components, including roads, buildings, structures, all services & facilities, common areas and allied works in accordance with the provisions of this Agreement. The Operator shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Project;
- (ii) carrying out adjustments, repairs, replacements or modifications during the O&M Period to maintain the Project Facility in good running conditions at all times as per Performance Standards and O&M Requirements specified. If any part of the Project Facility is required to be temporarily closed to carry out any adjustments, repairs, replacements or modifications, the Operator shall inform the Authority in advance (in writing). However, the Operator shall be required to take prior written approval of the Authority before undertaking any major maintenance or repair or improvement in respect of any structures at the Project Facility, at least 21 (twenty one) days prior to such proposed works. The Authority shall respond back in writing no later than 10 (ten) days from receipt of such request after the Nodal Officer/ Temple Officer have assessed the genuineness of the request made under the circumstances by doing a joint inspection of the proposed work along with the Operator. The permission shall only be granted if the Operator's request is found reasonable under the circumstances;
- (iii) carrying out with due diligence all necessary and periodical tests in accordance with the Applicable Laws. The Operator shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicative by the test results;
- (iv) ensure that operation of Project Facility does not disturb the operation of other activities in the vicinity of the Project premises;
- (v) not carrying out or allowing activities as mentioned in **Schedule-F** which are strictly prohibited in the Project Facility;

- (vi) deploying adequate trained staff to manage complete operations of the Project Facility and its upkeep, security, etc. in terms of this Agreement and Good Industry Practice;
- (vii) be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Concession Agreement;
- (viii) ensure that good service standards and good hospitality industry practices equivalent to atleast 2-star category hotel in the town are adopted and followed in the said Project throughout the Concession Period;
- (ix) at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Operator;
- (x) ensuring safe and secure atmosphere at the Project Facility;
- (xi) preventing with the assistance of the Authority and the concerned law enforcement agencies, any encroachments on, or authorized entry into the Project Facility;
- (xii) protection of the environment, flora and fauna & ecology of the area on account of carrying out of activities at the Project Facility. The garbage & sewer shall be disposed off in an environment friendly manner in accordance with Applicable Law, Applicable Permits and guidelines issued by any government agency of GOI or GoHP or the NGT or the Court of Law;
- (xiii) provisioning, operation and maintenance of continued supply of electricity, water, other services, materials, sewerage, communication lines, good sanitation conditions, garbage disposal system as per applicable regulations, and pay applicable utility expenses, charges/ rates, including penalties for default in payment, in relation to the use thereof, at the Project Facility. The Operator shall indemnify/ keep indemnified the Authority in this respect;
- (xiv) maintaining the requisite insurances as required under this Agreement;
- (xv) operating and maintaining adequate fire safety arrangements;
- (xvi) maintaining high standards of cleanliness and hygiene at the Project Facility. The Operator shall ensure that the beddings in the rooms are always kept clean and fresh. The Operator shall also ensure that the toilets on all the floors are kept clean with adequate availability of water always
- (xvii) installing and operate a hotel and restaurant management software for easy and effective day to day operations and management of the billing and inventory of the Project Facility;
- (xviii) putting appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.

11.2.2 The Operator recognizes and acknowledges the fact that the Project is intended to provide a public facility and the Operator shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such

usage under the terms of this Agreement, norms of the Temple Trust and in the public interest. However, the Operator shall give preference to the devotees visiting the holy Temple over other visitors/ guests. Under exceptional circumstances, if the Operator apprehends that act and conduct of any visitor may negatively affect public sensitivities or hurt their religious sentiments or amounts to showing disrespect to the Temple or is likely to cause detriment to the Project Facility, it shall have the authority to refuse entry to such person and report the matter to the Authority for its information. The Operator may also take assistance of the Authority and/ or police authorities in this regard, if required.

- 11.2.3 Notwithstanding anything contained herein, the Operator shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Operator shall always keep the Authority indemnified in this regard.
- 11.2.4 The Operator shall at its cost remove and rectify any defects or shortcomings pointed out by the Authority/ Nodal Officer by way of written notice or in any report pursuant to any inspection the Project Facility.

11.3 Damages for breach of maintenance obligations

- 11.3.1 In the event of failure to perform the obligations or comply with the Performance Standards and Maintenance Requirements and rectifying any defects within permissible time limits or any extension thereof, laid down in **Schedule-E**, the Operator shall be liable to a penalty which shall not exceed 0.05% of Performance Security for each day until rectification of such defect/ damage subject to maximum of 10% of Performance Security for each lapse in compliance in the Performance Standards/ Acts, Rules and Guidelines of the Competent Authority including the Authority. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. In case of appropriation of Damages amount from the Performance Security, the Operator shall be liable for replenishing/ maintaining the Performance Security to its original value within 15 (fifteen) days of receipt of the encashment notice from the Authority.
- 11.3.2 The Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its obligations hereunder.

11.4 Reporting and Remedial Measures

- 11.4.1 The Nodal Officer shall inspect the Project Facility at least once in three months during the O&M Period or at such shorter intervals as deemed appropriate, to determine its condition including its compliance with the provisions of the this Agreement. The Project Manager/ the Operator shall extend full co-operation to the Nodal Officer and the Temple Officer in performing its functions. The Nodal Officer shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defect and deficiencies, if any, with particular reference to the Performance Standards and Maintenance Requirements and safety aspects, and send a copy thereof to the Authority and the Operator within 7 (seven) days of such

inspection.

- 11.4.2 The Operator shall repair or rectify the defects or deficiencies, if any, set out in the O&M Inspection Report and furnish a compliance report in respect thereof to the Nodal Officer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; in case remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Operator shall submit progress update (via email) of the repair works once every week until such works are completed in conformity with this Agreement.
- 11.4.3 In the event the remedial measures are not completed by the Operator in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Operator under and in accordance with the provisions of Clause 11.3.
- 11.4.4 The Operator shall also provide the Authority with such reports which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc. The Operator shall also submit to the Authority on a regular basis, the following, upon obtaining knowledge thereof, any of :
- i Litigation, claims, disputes or actions, threatened or pending concerning the Project;
 - ii Refusal to grant, renew or extend, or any action threatened or pending that might affect any Applicable Permit;
 - iii All penalties or notices of violation issued by any Competent Authority.
 - iv Information concerning new or significant aspects of the Project, including any material complaint about the Facilities from any person.
 - v If the Authority, acting reasonably, requests a report or document about any information regarding the Project Facilities, the Operator shall prepare a draft of such document within the reasonable time limit prescribed.
- 11.4.5 The Authority may from time to time specify any changes in the formats or periodicity for any reports.

12. Accounts and Audit

12.1 Accounts and Audit

- 12.1.1 The Operator shall maintain books of accounts recording all its receipts (including all User Charges and other revenues derived/collected by it from or on account of usage of the Project Facilities), income, expenditure, payments (including payments from the Designated Account), in accordance with this Agreement and Accounting Standards, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its Cash Flow Statement and Profit and Loss Account, along with an audit report thereon by from its Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. Authority shall have the right to inspect the records of the Operator during the office hours and require copies of relevant extracts of books of accounts, duly certified by the Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 12.1.2 The Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by and under the Accounting Standards (Indian AS) and/or as prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 12.1.3 On or before the 31st (thirty-first) day of May each Year, the Operator shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Auditors giving summarized information on (a) occupancy of the Project Facility; (b) User Charges and received and other revenues derived from the various components of the Project Facility; (c) such other information as the Authority may reasonably require.

12.2 Appointment of auditors

- 12.2.1 The Operator shall appoint, and have during the subsistence of this Agreement a qualified Chartered Accountant as its Auditors. All the fees and expenses of the Auditors shall be borne by the Operator. The Operator may terminate the appointment of its Auditors after a prior notice of 45 (forty five) days to the Authority and in accordance with the provisions of law.
- 12.2.2 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") to audit and verify all those matters, expenses, costs, realisations and things, which the Auditors are required to do, undertake or certify pursuant to this Agreement.

12.3 Certification of claims by Auditors

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective, only if certified by its Auditors.

For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business between the parties.

12.4. Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Auditors, as the case may be, and the certification provided by the Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

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13. Nodal Officer

13.1 Nomination

- 13.1.1 The Authority shall appoint the Nodal Officer within 7 (seven) days of Agreement Date. The Nodal Officer shall act as the representative of the Authority in respect of the Project.
- 13.1.2 The Authority may replace/ change the Nodal Officer at any time and inform the Operator the particulars of the new officer appointed in place of earlier Nodal Officer.

13.2 Tenure

- 13.2.1 The tenure of Nodal Officer shall commence from the date of nomination thereof and shall continue until the end of the Concession Period unless terminated earlier in terms of this Agreement.

13.3 Roles and Responsibilities

- 13.3.1 Nodal Officer will ensure smooth implementation of the Project by undertaking, inter alia, the following roles and responsibilities:
- i) shall ensure compliance of the Furnishing Works by the Operator in terms of the minimum quality and standards prescribed in the Agreement or as per Good Industry Practice, as applicable;
 - ii) shall oversee and monitor the Operation, Maintenance and Management of the Project Facility in accordance with the provisions of this Agreement and call for information and explanation, in case of deviation, if any;
 - iii) shall ensure that the Operator is adhering to the directions and instructions of the Authority from time to time;
 - iii) shall review the curing of defects and defaults by the Operator in the Operations & Maintenance of the Project/Project Facility;
 - iv) shall use best endeavors to assist in resolving, without being liable in any manner, operational issues and disputes between the Operator and the Users of the Project Facility;
 - v) shall review the safety and security of the operations and maintenance activities relating to the Project;
 - vi) shall report to the Authority regularly on monthly basis any cases of faults, defaults, defects in operation, fraud investigated or grievances received against the Operator and thereafter ensure that the Operator complies with the remedial measures suggested by the Authority;
 - vii) shall monitor the redressal of complaints and grievances from the Users related to the Project Facility and duly report the same to the Authority; or

- viii) Any other duty which is considered in the overall interest of the Project as per the directions of the Authority.

- 13.4 Nodal Officer shall visit the Project Facility at least once a month or earlier as may be required during the Furnishing Period, to inspect the Project Facility along with the Project Manager of the Operator, to ensure compliance of the works in accordance with the provisions of this Agreement. The Nodal Officer shall prepare a report of such inspection (the “**Inspection Report**”) stating in reasonable detail any shortcoming or deficiencies, if any, with particular reference to the Performance Standards specified in **Schedule-E**. The Nodal Officer shall submit the Inspection Report to the Authority with a copy marked to the Operator within 5 (five) days of such inspection. The Nodal Officer shall ensure that the Operator upon receipt thereof shall forthwith rectify and remedy the defects and deficiencies, if any, stated in the Inspection Report. The Nodal Officer shall inspect the Project Facility at least once in three months during the O&M Period or at such shorter intervals as deemed appropriate in accordance with the manner specified in Clause 11.4. The Project Manager/ the Operator shall extend full co-operation to the Nodal Officer and the Temple Officer in performing its functions.
- 13.5 Any failure on the part of the Nodal Officer and/ or Temple Officer in respect of its functioning shall not (i) amount to any consent or approval or waiver of the activities of the Operator; and (ii) release or discharge of the Operator of its obligation in part or full, to carry out the Operations & Maintenance of the Project Facility in orderly manner.

14. Force Majeure

14.1. Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of events, as defined in Clause 14.2 if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event

- (i) Is / are beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- (iii) has Material Adverse Effect on the Affected Party.

14.2. Force Majeure Events

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

- (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 Project Facility);
- (b) Strikes including industry-wide or State-wide strikes, (other than those involving the Operator, contractors or their respective employees/ representatives, or attributable to any act or omission of any of them) interrupting services to the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation, lockdowns, curfew, embargo, blockade interrupting services at the Project Facility for an aggregate period exceeding 14 (fourteen) days in an Accounting Year
- (d) Any failure or delay of a contractor but only to the extent caused by another Force Majeure Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such contractor;
- (e) Any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

- (g) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (g) Industry-wide or State-wide strikes or industrial action for a continuous period of 48 (forty eight) hours and exceeding an aggregate period of 14 (fourteen) days in an Accounting Year;
- (h) Compulsory acquisition in national interest or expropriation of any Project Facility or rights of the Operator or of the contractors;
- (i) Unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Operator or any of the contractors to perform their respective obligations under this Agreement and the Third Party Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit; or
- (j) Any event or circumstances of a nature analogous to any of the foregoing;

14.3 Duty to Report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 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.

14.4. Effect of Force Majeure Event

14.4.1 Upon the occurrence of any Force Majeure Event :

- (i) before COD, the time for completion of Furnishing Works shall be extended by a period equal in length to the duration of the Force Majeure Event; or
- (ii) after COD, whereupon the Operator is unable to collect User Charges/ project revenues despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Operator was prevented from collection of project revenues on account thereof.

14.4.2 In case of complete lockdown imposed in the State by the State Government/ Central Government on account of Covid, whereby all movement of people from within or outside the State is banned as a result of which the Operator is unable to collect User Charges/ project revenues despite making best efforts, then upon specific request made by the Operator in writing, and based upon Authority's own due diligence and verification of the claim of the Operator, the Authority, may consider postponing/ deferring the payment of Annual Concession Fee during the period of complete lockdown as notified by the State Government/ Central Government from time to time.

14.5. Allocation of Costs Arising out of Force Majeure

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

14.6. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, 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, save as provided in this Article 14 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.

14.7. Termination Payment for Force Majeure Event

In the event of Termination on account of Force Majeure Event, the Operator shall be entitled to receive from the Authority by way of Termination Payment a sum equal to lowest of the following (i) or (ii) :

- (i) 90% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Operator less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Operator; **OR**
- (ii) 90% of Debt Due less pending Insurance claims.

Further, the Performance Security shall be returned to the Operator.

14.8. Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 19 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.

14.9 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.

15. Termination

15.1. Termination for Operator's Default

Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the Cure Period which shall be 60 (sixty) days from the date of notice of default (the **“Default Notice”**) from the Authority, shall be considered for the purpose of this Agreement as Event of Default of the Operator (**“Operator Event of Default”**) :

- (a) The Performance Security has been partially or fully invoked and appropriated by the Authority as per this Agreement and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) The Operator does not make payment to the Authority and remains in default for a period of more than 15 (fifteen) days from the due date of payment. However, in case of payment of Annual Concession Fee, any default by the Operator in payment beyond 4 (four) weeks from due date shall tantamount to Operator's Event of Default;
- (c) Change in Ownership has occurred in breach of the provisions of this Agreement;
- (d) The Operator defaults on any of its obligations pertaining to compliance with the Applicable Laws and Applicable Permits and continues to be in default;
- (e) The Operator fails to undertake the O&M obligations including compliance with the Performance Standards and Maintenance Requirements as mentioned in this Agreement;
- (f) The Operator creates any Encumbrances, charges or lien in respect of the Existing Property, Project Facility, Project Site or any part thereof in favor of any Person, save and except as otherwise expressly permitted in this Agreement;
- (g) The Operator allows or undertakes (more than two occasions in any Financial Year) at the Project Facility, any of the Prohibited Activities or any other actions or activities which violate the sacredness of the area and/ or shows disrespect to the Temple or hurt the religious sentiments of the people or is likely to cause detriment to the Project Facility;
- (h) The Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (i) The Operator commits a material default in complying with any other provision of this Agreement and continues to remain in default;
- (j) The Operator novates and /or assigns the agreement to any third party without any prior approval for the same from the Authority;

- (k) The Operator indulges in any sort of construction activity or major repair or structural alterations at the Project Facility or demolishes any structure at the Project Facility without prior written approval of the Authority;
- (l) The Operator abandons or manifests intention to abandon the Project without prior written consent of the Authority;
- (m) The Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement or repudiation thereof;
- (n) Change in the management and/ or control of the Operator entity (i.e. Company/ Society/ Partnership) which according to the Authority has a Material Adverse Effect on the Project;
- (o) The Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (p) A resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by the NCLT or Court of competent jurisdiction and a provisional Liquidator or Receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by Court.

15.2. Procedure to issue Termination Notice

Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Operator's Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 15 (fifteen) days' time to the Operator to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

15.3. Termination for Authority Event of Default

15.3.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Event of Default**") unless the default has occurred as a result of any breach of this Agreement by the Operator or due to Force Majeure. The defaults referred to herein shall include:

- i. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Operator; or
- ii. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

15.3.2 Without prejudice to any other right or remedy which the Operator may have under this Agreement, upon occurrence of a Authority Event of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

15.4 Termination Payment

15.4.1 Upon Termination by the Authority on account of an Operator Event of Default, the Operator shall not be entitled to receive any Termination Payment during the Furnishing Period. However, during the Operation & Maintenance Period, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to lowest of the following (i) or (ii):

- i. 75% of Book Value of Project Assets (Total Project Cost) based on historic investment (net of depreciation) created by the Operator less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Operator; **OR**
- ii. 75% of Debt Due less pending Insurance claims.

In addition to the above stated, the Authority shall be entitled to encash and appropriate the Performance Security.

15.4.2 Upon Termination by the Operator on account of Authority Event of Default, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to the lowest of the following (i) or (ii):

- i. 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Operator less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Operator; **OR**
- ii. 100% of Debt Due less pending Insurance claims;

In addition to this, the Performance Security shall be released to the Operator by the Authority.

15.4.3 Termination Payment shall become due and payable to the Operator within 90 (ninety) days of a demand being made by the Operator to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 4% (four per cent) above the RBI's Repo Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

15.4.4 The Operator expressly agrees that Termination Payment under this Article 15 shall constitute a full and final settlement of all claims of the Operator on account of Termination of this Agreement for any reason whatsoever and that the Operator or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

15.4.5 As a consequence of Termination, irrespective of the reason for Termination, the Operator shall transfer all movable and immovable assets forming part of the Project Assets to the Authority upon the Transfer Date.

15.5. Other Rights and Obligations of the Authority

Upon Termination of this Agreement for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project Facility forthwith;
- (b) take possession and control of all assets, materials, stores and implements, equipments, hardware/ software on or about the Project;
- (c) be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Project Facility or any part of the Project;
- (d) require the Operator to comply with the Divestment Requirements set forth in Article 16;
- (e) succeed upon election by the Authority (*at its sole discretion*), without the necessity of any further action by the Operator, to the interests of the Operator under such of the Third Party Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to such third party only for compensation accruing and becoming due and payable to them under the terms of their respective Third Party Agreements from and after the date the Authority elects to succeed to the interests of the Operator. For the avoidance of doubt, the Operator acknowledges and agrees that all sums claimed by such third parties as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Operator and such third parties, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

15.6 Survival of Rights

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

15.7 Liability for defects after Termination

The Operator shall be responsible for all defects and deficiencies in the Project for a period of 90 (ninety) days after Termination, and it shall have the obligation to

repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project within the time specified by the Authority in this regard. In the event that the Operator fails to repair or rectify such defect or deficiency within such period as specified by the Authority or within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, whichever is later, the Authority shall be entitled to get the same repaired or rectified at the Operator's risk and cost. All costs incurred by the Authority hereunder shall be reimbursed by the Operator to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security of the Operator.

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16. Divestment of Rights and Interest

16.1. Divestment Requirements

16.1.1 Upon Termination of this Agreement, the Operator shall comply with and conform to the following divestment requirements:

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver/surrender/ transfer and assign forthwith the actual or constructive possession of the furnished Project Facility to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens, assignment and encumbrances created or suffered by the Operator after the Effective Date. All of the Operator's right, title and interest in and to the Project Assets including any/ all additions/ up-gradations/ modifications made by the Operator during the Concession Period and the Project Facility shall determine and shall revert/ stand transferred in the name of the Authority;
- (c) cure all Project Assets, of all defects and deficiencies so that the Project Facility is compliant with the Maintenance Requirements; provided that in the event of Termination during the Furnishing Period, all Project Assets shall be handed over on "*as is where is*" basis after bringing them to a safe condition;
- (d) ensure that personnel of the Operator deployed on the Project Facility shall continue to be the employees of the Operator and the transfer of the Project Assets and the Project Facility shall not in any manner affect their status as employees of the Operator and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency;
- (e) to the extent possible assign to the Authority or its nominated agency (only if so requested by the Authority) at the time of transfer all unexpired guarantees and warranties by suppliers. The Operator shall ensure that any rights, which are to be so assigned, are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterpart to the Operator;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project Facility and Project Site, including manufacturers' warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee;
- (g) to the extent possible at the time of transfer/ assign to the Authority or its nominated agency (only if so requested by the Authority) all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Operator with third parties and subsisting at the time of transfer except contracts with employees;

- (h) at the time of transfer of the Project Facility, the Project Facility shall be in running and operational condition as is reasonable in all the circumstances, taking into account their age, the design, materials used, and maintenance carried out;
- (i) until the Transfer Date, all risks shall lie with the Operator for loss of or damage to the whole or any part of the Project Facility, unless the loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement. The Operator, if required, shall provide fair and just compensation to such employees as required under the Applicable Laws or under this Agreement, and shall indemnify the Authority against any and all claims such employees may make for loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Operator's employees, staff and labour;
- (j) the Operator shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the transfer of the Project Facility to Authority by the Operator;
- (k) on the Transfer Date, the declaration of license shall automatically terminate and the Operator, its subcontractors, agents, employees and licensees shall vacate the Project Facility and the leave the possession of the Project Assets;
- (l) from the Transfer Date, the obligations and the rights of the Operator under this Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Project Facility and the Project Assets and their Operations & Maintenance and any other rights or obligations arising out of this Agreement which either expressly or implicitly survive Termination of this Agreement; the Operator shall no longer act in its capacity as Operator in relation or pursuant to this Agreement; and
- (m) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

16.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Third Party Agreements to perform or procure the performance by a third party of any of the obligations of the Operator, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

16.2. Inspection and Cure

Not earlier than 90 (ninety) days prior to Termination due to efflux of time but not later than 30 (thirty) days prior to the effective date of such Termination, the Authority/ Nodal Officer and the Temple Officer along with the Operator's Representative shall jointly verify, after giving due notice to the Operator, specifying the time, date and venue of such verification and/or inspection, compliance

by the Operator with the Maintenance Requirements set forth in **Schedule-E**. Defaults, if any, shall be cured by the Operator at its cost and the provisions of Clause 15.7 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 16.

16.3. Divestment costs etc.

16.3.1. The Operator shall bear and pay all costs incidental to divestment of all of the rights and interest of the Operator in the Project Facility in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Operator in connection with such divestment shall be borne by the Authority.

16.3.2. In the event of any dispute relating to matters covered by and under this Article 16 only the Dispute Resolution Procedure shall apply.

16.4 Cooperation and assistance on transfer of Project

16.4.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Parties.

16.4.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Operator shall further provide such reasonable advice and assistance as the Authority, its Operator or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

16.5 Vesting Certificate

The divestment of all rights and interest in the Project Facility shall be deemed to be complete on the date when all of the divestment requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate (the “**Vesting Certificate**”), in the format at **Schedule-G**, which will have the effect of constituting evidence of divestment by the Operator of all of its rights and interest in the Project Facility etc., and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the divestment requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Facility on the footing that all divestment requirements have been complied with by the Operator.

17. Liability and Indemnity

17.1 General indemnity

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

17.2 Liability of the Authority

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

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

Provided that the liability of the Authority in any case or in any manner whatsoever, with respect to this Clause 17.2 shall be limited to the sum not exceeding the amount equal to six months of Concession Fee received by the Authority before identification or occurrence of such event.

17.3 Indemnity by the Operator

Without limiting the generality of Clause 17.1, the Operator shall fully indemnify, hold harmless and defend the Authority from and against any and all costs, expenses, loss and/or damages arising out of or with respect to the following:

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

- (d) Breach by the Operator of any of the obligations under this Agreement.

17.4. No consequential claims

Notwithstanding anything to the contrary contained in this Article 17 the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

17.5. Survival on Termination

The provisions of this Article 17 shall survive the Termination.

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18. CHANGE IN LAW

18.1 Change in Law

18.1.1 Change in law means the occurrence of any of the following events after the Effective Date having direct bearing on the implementation of the Project:

- (i) Enactment of any new Indian Law as applicable to the State of Himachal Pradesh;
- (ii) The repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Indian Law as applicable to the State of Himachal Pradesh;
- (iii) The commencement of any Indian Law as applicable to the State of Himachal Pradesh, which has not yet entered into effect until the Effective Date;
- (iv) The change in interpretation or application of any Indian Law by a Court of Record which has become final, conclusive and binding, as compared to such interpretation or application by a Court of Record prior to the Effective Date;
- (v) The imposition or requirement for a new statutory or regulatory approval or a modification in the terms and conditions on which a statutory or regulatory approval has already been obtained.

It is specially clarified that a change in the rate of a tax or duty shall not be considered a change in law for the purpose of this Article if the tax or duty itself was in existence on the Bid Due Date.

18.1.2 If the Operator suffers (or will suffer) delays or incurs (or will incur) additional costs, or loss in revenue resulting from such Changes in Law the aggregate financial effect of which exceeds the higher of Rs.3,00,000/- (Rupees Three Lakhs only) and 0.5% (zero point five percent) of the total revenue being collected by the Operator in any Accounting Year, the Operator shall give notice to the Authority. After receipt of such notice, the Authority shall proceed to agree or determine any adjustment to the Concession Period to which the Operator is entitled, and shall notify the Operator accordingly. The Concession Period shall be adjusted taking into account any increase or decrease in the costs resulting from Changes in Law specifically in relation to the Project, made after the Effective Date.

18.1.3 The guiding principle in the operation of this Article shall be so as to place the Operator in subsequently the same legal, commercial and financial position as it was prior to such Change in Law.

18.2 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Operator any sums on account of a Change in Law if the same are recoverable from the Users.

19. Dispute Resolution

19.1. Dispute Resolution

19.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 19.2.

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

19.2 Conciliation

19.2.1 In the event of any Dispute between the Parties, either Party may call upon the **Secretary (Language, Art and Culture) Government of Himachal Pradesh** to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 19.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 19.3.

19.3 Arbitration

19.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 19.2 the parties shall submit such dispute for arbitration by the ‘**Secretary (Law), Govt. of Himachal Pradesh**’ as the Sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Una, Himachal Pradesh and the language of arbitration proceedings shall be English.

19.3.2 The Sole Arbitrator shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 19 shall be final and binding on the Parties as from the date it is made, and the Operator and the Authority agree and undertake to carry out such Award without delay.

19.3.3 The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.

18.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect including the obligation of the Operator to pay the Annual Concession Fee along with any applicable interest due to be payable to the Authority in terms of this Agreement, pending the Award in any arbitration proceedings hereunder. The Operator hereby agrees that pending any arbitral proceedings or a stay granted by any court of law, the interest on any unpaid amount payable to the Authority by the Operator shall continue to accrue and shall be payable to the Authority irrespective of such proceedings or the stay granted by the court of law.

20. Assignment and Charges

20.1. Restrictions on assignment and charges

- 20.1.1 The Operator shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, either in part or full, except with prior consent of the Authority.
- 20.1.2 The Operator shall not assign in favour of any person any right or benefit that has not been provided to the Operator by the Authority.
- 20.1.3 The Operator shall neither create, nor permit creation or subsistence of any encumbrance in the Project Facility. It is further clarified that any assignment or license on the Project Facility, given to the Operator, shall expire upon termination of this Agreement.
- 20.1.4 The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project/ Project Site/ Project Assets/ or any other movable/ immovable assets in any manner whatsoever. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

21. Disclaimer

21.1 Disclaimer

- 21.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Bid Documents, Scope of the Project to be executed, the Project Facility, Technical Requirements, Performance Standards set for providing quality services, local conditions, possible demand and all information provided by the Authority, or obtained, procured or gathered otherwise and has determined to its satisfaction its accuracy or impact otherwise and the nature and extent of difficulties, risks and hazards, as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 8.2, the Authority makes no representation whatsoever, express or implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 21.1.2 The Operator hereby acknowledges and accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Sub clause 21.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under this Agreement.
- 21.1.3 The Operator further acknowledges that it, or any entity claiming under it, shall have no recourse against Authority if it is, at a later date, found that the Project Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harboured by the Operator in relation to any of the foregoing provisions of this Clause. If a deficiency is found, the Operator acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.
- 21.1.4 Subject to the provisions of this Agreement, the Operator shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the financing, operation, maintenance and management of the Project and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Operator shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Authority and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

22. Miscellaneous

22.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at District Una, Himachal Pradesh only shall have jurisdiction over matters arising out of or relating to this Agreement.

22.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitutes commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity, which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction;

22.3 Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, it shall be within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond the stipulated period, the defaulting Party shall pay penalty for the period of delay calculated at a rate equal to RBI Repo Rate + 4% (four percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

22.4. Waiver

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

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

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

22.5 Liability for Inspection of Documents

Except to the extent expressly provided in this Agreement:

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

22.6 Exclusion of Implied Warranties etc.

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

22.7 Survival

22.7.1 Termination shall:

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

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

22.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons

especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

22.9. Severability

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

22.10 No Lease

This Agreement shall not be interpreted or construed to confer lease-hold rights on the Operator by the Authority. It is therefore expressly clarified that this Agreement constitutes a legal license given by the Authority to the Operator for the sole purpose of the fulfillment of the Operator's obligations as set forth in this Agreement.

22.11 No partnership

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

22.12 Third Parties

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

22.13 Successors and Assigns

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

22.14 Notices

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending the same by prepaid registered mail addressed to the

Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the purposes of this Sub clause 22.14 and shall be deemed to be effective (in the case of registered mail) 5 (five) calendar days after posting, (in the case of facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery.

If to the Authority :

Address :

Tel: No.

Fax No.

Attention : The Commissioner (Temple)

If to the Operator:

Address :

Telephone :

Fax :

Attention :

22.15 Language

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

22.16 Counterparts

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

22.17 Amendments

Any alteration or modification of this Agreement shall be made in writing by way of an indenture of Amendment to this Agreement duly agreed and signed by both the parties. No oral alterations or amendment shall be enforceable.

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

<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of the Authority</p> <p>.....</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of the Operator</p> <p>.....</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p>
---	--

In the presence of witnesses :

Signature

Name

Address

Signature

Name

Address

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SCHEDULES TO THE AGREEMENT

INDEX OF SCHEDULES

Schedule -A: - Project Site

Schedule-B: - Description of Existing Property

Schedule-C: - Declaration of License

Schedule-D: - Format of Performance Security

Schedule-E: Performance Standards & Maintenance Requirements

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Schedule-H: List of Installed Items in the Existing Property (*prepared pursuant to joint inspection*)

Schedule -A: Project Site

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Schedule-B: Description of Existing Property

Shri Chintpurni Sadan, Block-C is located just around 1 Km away from the temple shrine. The pilgrims can even walk to reach the temple shrine from the Block-C. Shri Chintpurni Sadan, Block-C is fully constructed property with 34 Rooms and 2 dormitories which can be categorised under deluxe, semi deluxe and family suites. The Block has a parking facility for 11 cars, and the property is adjacent to the general parking facility, where the priority parking can also be provided to the guests staying at Block-C.

Details of Commercial Complex Hotel & Restaurant/ propose for Operation and Maintenance on PPP mode for Shri Chintpurni Sadan – Block – “C”.

- | | |
|--------------------------|---|
| 1. Basement | <ul style="list-style-type: none"> - Parking – 11 Cars - Stair Case – 2 Lift-2 - WC-1,1, Urinal-2 Wash Basin-4 - Office (6.035x4.80)(20’x16’) |
| 2. Ground Floor | <ul style="list-style-type: none"> - Restaurant (19.47x12.46m) - Kitchen (9.88x9.39) - Dish Wash, Cold Storage - Grain Store, Staff Toilet 1 WC - 2-Urinals, Wash Basin - Manager Cabin, Entrance Stairs - Lift – 2, Reception, G-Toilet – 1WC - 3 Urinals, 2 Wash Basin - Ladies Toilet – 2 WC – 2 Wash Basin |
| 3. 1 st Floor | <ul style="list-style-type: none"> - 10 Bed Rooms, 6 Bed Dormitory - 6 Bed Staff Dormitory - Store (2350x1685), Lift – Stairs |
| 4. 2 nd Floor | <ul style="list-style-type: none"> - 14 Rooms, Store – 1 No., Lift - 2 No. Stairs |
| 5. 3 rd Floor | <ul style="list-style-type: none"> - 10 Bed Rooms, 2 Family Suit - Store - Lift 2 No., Stairs-2 No., Grain Store 1 No. |

Abstract of C-Block

34 No. Bed Rooms	68 Persons
2 Nos Family Suits	08 Persons
2 Dormitories, 6 Beds in Each	12 Persons
88 Nos.	

Schedule-C: Declaration of License

This is to declare that the License rights in terms of the Concession Agreement dated _____ in respect of all the land (alongwith the existing Project Assets, infrastructure, movable and immovable property thereon, if any, belonging to the Temple Trust Mata Shri Chintpurni Ji, Tehsil Amb, District Una, Himachal Pradesh comprising the Project Site which is described, delineated and shown in Schedule I of the Concession Agreement dated _____ including the possession thereof are hereby granted by the Temple Trust Mata Shri Chintpurni Ji (i.e. the Authority/ Licenser) in favour of M/s _____ (i.e. the Operator) for a period co-terminus with the term of the Concession Agreement, specifically for the purpose of “Operation & Management of Shri Chintpurni Sadan Block –C, District Una, (A Commercial Complex – Hotel & Restaurant) in Himachal Pradesh on PPP mode” (the **“Project”**).

It is further confirmed that the Authority has represented and confirmed to the Operator that the Authority is legally authorized and fully empowered to convey the aforesaid license rights in respect of the Project Site in favour of the Operator and the same has been done by the Authority in compliance with the all Applicable Laws. The Project Site is to be used by the Operator strictly in accordance with the provisions of the Concession Agreement dated _____ and for the purposes permitted under the said Concession Agreement and for no other purpose whatsoever.

Dated :

**Temple Trust Mata Shri Chintpurni Ji,
Tehsil Amb, District Una, Himachal Pradesh**

Schedule-D: Format of Performance Security

Bank Guarantee No.

Issuer of Bank Guarantee

(Name of Bank)

(Hereinafter referred to as the “**Bank**”)

Beneficiary of Bank Guarantee

Details of the Bank of the Beneficiary

Bank: <>

Branch:<> IFSC

Code:<>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the “**Concession**”) to be executed amongst Temple Trust Mata Shri Chintpurni Ji, Tehsil Amb, District Una, Himachal Pradesh through its Commissioner (Temple) [Hereinafter referred to as the “**Authority**”] and _____ (name of the Selected Bidder/ JV) [hereinafter referred to as the “**Operator**”] for the Operation & Management of Shri Chintpurni Sadan Block-C, District Una, (A Commercial Complex-Hotel & Restaurant) in Himachal Pradesh on PPP mode [hereinafter referred to as the “**Project**”], provided, however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall be in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e. “Performance Security” shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and Irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/ Operator.

As per the terms of the Concession Agreement, the Operator is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ only) as security for due and punctual performance/ discharge of its obligations under the Concession Agreement for the Agreement Period.

Operative part of the Bank Guarantee

1. At the request of the Operator, we _____ (name and address of the bank), hereinafter referred to as the (“**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Bidder, upto a total sum of Rs _____ (Rupees _____ only), such sum being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Operator and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Operator or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs. _____ (Rupees _____ only).
3. We hereby waive the necessity of the Authority to demand the said amount from the Operator first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Operator, which are recoverable by the Authority by invocation of this Guarantee.
5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Operator. We undertake that to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _____ (Rupees _____ only) notwithstanding any dispute or disputes raised by the Operator or anyone else in any suit or proceedings before any dispute review arbitrator, court, tribunal or other Authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so

made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Operator shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till_____
8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Una, Himachal Pradesh having address at _____.

Notwithstanding anytime contained herein:

1. Our liability under this Bank Guarantee shall not exceed Rs_____ (Rupees _____ only).
2. The unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____
3. We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a written claim or demand on or before _____.

Signed and sealed this _____ day of _____ 20____ at _____

SIGNED, SEALED AND DELIVERED

For and on behalf of
the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

Notes:

- (i) The bank guarantee should contain the name, designation and code number of officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Schedule-E: Performance Standards & Maintenance Requirements

The Performance Standards define the levels at which the Project is to be operated, managed and maintained throughout the Concession Period. Performance Standards set forth herein are applicable for both the Furnishing Period as well as the O&M Period.

1. PERFORMANCE STANDARDS FOR FURNISHING WORKS

- i. Furnishing Works to be carried out in accordance with the Good Industry Practices equivalent to atleast 2 -star category hotel guidelines issued by the Ministry of Tourism, Govt. of India;
- ii. The Operator shall comply with all the Applicable Laws and Applicable Permits including the Rules and Guidelines of the Temple Trust while carrying out furnishing Works;
- iii. The Operator is not allowed to make any changes in the structure or design or change the façade of the Existing Property/ Project Facility, without the prior written approval of the Authority;
- iv. The Operator shall use premium quality materials for Furniture, Furnishings material, fittings, fixtures, equipments, appliances, etc. so as to ensure standards equivalent to 2 Star or above category Hotel as per MoT Guidelines;
- v. The Operator shall procure and provide all equipments and appliances in Kitchen and BOH Areas, PA systems, computers and peripherals, printers, OFC connectivity, LED screens, etc;
- vi. The Operator shall provide all furnishings in rooms including linen, curtains, upholstery, etc;
- vii. The Operator shall provide all furniture and equipments/ appliances including beds, almirahs, consoles, LED TVs, sofas, tables, chairs, etc.
- viii. The Operator shall at its cost and expense make arrangements for electricity, water and other utilities at the Project Facility;
- ix. The Operator shall engage and deploy adequate number of trained and professionally qualified, skilled and semi-skilled staff and personnel at the Project Site for performance of obligations under this Agreement;
- x. The Operator shall ensure availability of personnel on 24x7 basis in Reception Area for providing assistance to the guests staying at the Project Facility, with an ability to communicate both in English and Hindi or the local language;
- xi. The Operator shall provide turndown services and other housekeeping services to be provided on daily basis or on demand;
- xii. The Operator shall ensure seamless operations of all the basic necessities like drinking water, toilets, DG sets, firefighting facility, and security at the Project Facility.
- xiii. The lighting of the Project Facility should be aligned towards adequate vision, comfort and safety. There should be uniform lighting throughout the Facility with no dark patches or

pockets. The Operator is expected to save energy and should use CFL or LED lamps in order to save energy. The Operator may harness solar energy by installing solar panels, if possible, at its cost and expense without spoiling the aesthetics of the Existing Property and causing hindrances in the free movement;

- xiv. The Operator shall at its own cost enter into Annual Maintenance Contracts (AMCs) for various installations including lifts with the Vendors/ concerned agencies;
- xv. The Operator shall ensure strict compliance with Covid related protocols & behaviors as per instructions issued by the State Government/ Govt. of India from time to time, both by the staff and Users.
- xvi. The Operator shall also display the entry, exit including emergency exit related information and contact numbers of nearest Hospital, Ambulance Service, Police station, Fire Station, etc.

2. PERFORMANCE STANDARDS FOR OPERATION, MAINTENANCE AND MANAGEMENT PHASE

The Operator shall be committed to continuous improvement and shall implement systems to facilitate this objective.

2.1 GENERAL REQUIREMENTS

- i. The Operator shall maintain the Project Facility in good and usable condition throughout the Concession Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- ii. The O&M obligations of the Operator shall include all the activities required for regular and periodic maintenance of the Project Facility during the Operations Period, so that the same is maintained at all times in a manner that it complies with the provisions of the Concession Agreement and the Performance Standards set forth herein, in a sound, durable and functional condition.
- iii. The Operator shall adhere to standards equivalent to atleast 2 -star category hotel guidelines issued by the Ministry of Tourism, Govt. of India.
- iv. The Operator shall program inspections/monitoring of the Project Facility for its good upkeep and smooth operations. The inspections/ monitoring shall cover all the elements of Project Facility including building structure, electrical and mechanical systems, signages, service standards, etc. The frequency of monitoring has been indicated and can be suitably revised in consultation with the Authority. The Operator shall carry out combined inspections along with the Nodal Officer/ Temple Officer/ Authority or its representative on regular bases as mutually agreed between the Parties. However, the Nodal Officer/ Authority is free to take up additional inspection to ensure the performance standards.

2.2 EQUIPMENT MAINTENANCE

The Operator shall undertake planned and responsive maintenance of all the fittings, fixtures, equipments, appliances, etc. so that the same are always in the state of efficient, accurate and optimum performance thus ensuring maximum availability and continuity of services by maintaining standards set by equipment manufacturer and/ or Good Industry Practice, as the case may be.

2.3 STAFFING AND PERSONNEL TRAINING

- i. The Operator shall make provision of adequate staff required for Furnishing Works, O&M and day to day management of the Project Facility as required from time to time.
- ii. The Operator shall ensure that all staff engaged in the delivery of the services and facilities at the Project Facility is at all times properly adequately notified, trained and instructed to deal with the Users in a polite and courteous manner; follow cleanliness and hygienic practices including all Covid related protocols & behaviors as per instructions issued by the State Government/ Govt. of India from time to time.
- iii. The Operator shall ensure that all staff are properly and presentably dressed in appropriate uniforms and wear identification badges at all times while working in the Project Facility.
- iv. The Operator should carry out thorough background check and verification of the staff hired and maintain proper records about their particulars.

2.4 SECURITY

- i. The Operator shall take all reasonable precautions to minimize theft, injury to visitors or their property within confines of the Project Facility.
- ii. The Operator shall make a provision of adequate security to prevent any theft and ensure seamless operations 24-hours of the surveillance system which continuously monitors and controls entry into and exit from the Project Facility. A closed circuit television (CCTV) network may be augmented if required for security and surveillance as well as for central monitoring purposes.

2.5 PERFORMANCE STANDARDS/ INDICATORS FOR OPERATIONS

The O&M of the Project shall be carried out to maintain the performance standards, which shall comprise, but shall not be limited to the following :

- i. The obligation of the Operator with respect to Maintenance Requirements shall include the rectification of the defects and deficiencies specified below within the time limit set forth against such deficiency or defect.
- ii. Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified

herein, the Operator shall be entitled to additional time in conformity with Good Industry Practice. However, the Operator shall get prior approval from the Authority, for such additional requirement of time.

- iii. Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the Project poses danger to the life and property of the Users thereof, the Operator shall promptly take all reasonable measures in consultation with Authority for elimination or minimizing such danger.
- iv. There should be regular sweeping of the Project Facility areas multiple times in a day to ensure cleanliness always.
- v. The Operator shall follow adequate waste management and disposal methods for waste generated from Project Facility operations

I. Performance Indicators and their permissible time limits

S. No.	Parameters	Performance Indicators	Permissible Time Limits For Rectifying Defects
1	Hotel	To remain operational 24 (twenty four) hours a day throughout the year	
2	Parking Area	To remain operational 24 (twenty four) hours a day throughout the year	
3	Enquiry Office	To remain operational 16 (sixteen) hours a day throughout the year	
4	Information Systems, Displays, signage and boards	To remain operational 24 (twenty four) hours a day throughout the year.	All these signage and boards should be clearly visible, legible and functional. Maximum 2% (two percent) number of damaged signage and boards at any given point of time. These shall be cleaned once in a week. Damaged signage and boards replaced, repaired within seven days of their detection.
5	All toilets, urinals, bathrooms shall be clean and functional	To remain operational 24 (twenty-four) hours a day throughout the year.	A minimum of 95% (ninety-five percent) toilets and urinals shall be functional. It should be demarked with

			suitable sign boards. These should be kept clean and hygienic and cleaning shall be done every day. For public use toilets, cleaning of toilets to be done multiple times in a day to always keep them in clean and hygienic condition.
6	Natural and Mechanical Ventilation and Illumination		Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC. Any disruption in it shall be rectified within 24 (twenty-four) hours. Arrangement for natural ventilation like skylights ventilators, shafts etc. shall be cleared after every 5 (five) days.
7	Water supply and all drinking water chambers	To remain operational 24 hours a day throughout the year.	95% (ninety-five percent) drinking water chambers shall be functional. These shall be cleaned daily. Drinking water quality in all the seasons shall be as per WHO standards
8	Power Supply, Electrical installations, Electrical Equipment	To remain operational 24 (twenty four) hours a day throughout the year.	Any disruption in power supply shall be rectified in six hours. Timely intervention with temporary measures within 3 (three) hours, permanent restoration within 3 (three) days, depending on nature and intensity of work required as decided by the Authority.
9	Telecommunication and Networking Equipment	To remain operational 24 (twenty-four) hours a day throughout the year.	Temporary measures within an hour and permanent restoration within a day.

10	Standby Diesel Generator Set	Kept in good functional condition.	Standby diesel generator set to supply power to Project Facility must be available 24 (twenty four) hours a day throughout the year in case of disruption or breakdown in power supply. The Operator can also procure electricity from the diesel generator installed by the Authority common for all the 3 Sadan Blocks, against payment of requisite charges as fixed by the Authority.
11	Elevators	To remain operational 24 (twenty-four) hours a day throughout the year.	Regular maintenance of elevators through AMC's shall be done and in case of any fault, the personnel of the agency providing AMC services should be informed within one hour of detection of fault. The Operator to ensure that the fault is rectified within least possible time.
12	Maintenance Office	To remain operational 24 (twenty four) hours a day throughout the year	
13	Security	To remain operational 24 (twenty four) hours a day throughout the year.	Proper upgradation and installation of up to date security devices and equipments shall installed in the facility and there should be proper weekly check of these equipments and also a proper training should also be there for security personnel present in the site. Any defects in the security devices and equipments should rectified within a day or two.
14	Dustbins, spittoons	Should be there at the	A minimum of 95%

	etc. shall be clean and functional	facility all the time.	(ninety five percent) Dustbins, Spittoons shall be functional at any given point of time. Dustbins shall be emptied after every 3 (three) hour or earlier if it is full or it create foul smell in the neighborhood.
15	Lifts & Staircase shall be clean and functional	_____	The lift and staircase shall be cleaned twice a day. Damaged handrails, risers or treads shall be repaired within 2 (two) days after detection
16	Boundary Wall shall be without any damage/breach	_____	Any damage/ breach to the boundary wall shall be rectified within 3 (three) days after their detection
17	There shall be no standing water on pavement surface, no water logging in the centre		Immediate measures to be taken and water logging should be cleared within one hour
18	Drainage and Sewage	Should be operational throughout the year	Timely intervention with temporary measures within 4 (four) hours, permanent restoration within 7 (seven) days, depending on nature and intensity of work required.

The Operator shall follow the following timetable for routine cleaning of the Project Facility:

- **Daily Tasks:** Clean lavatories, sweep and wash floors, dust, clean (open) drains, empty dustbins, scrub kitchen tables. Toilets on all the floors are to be kept clean with proper ventilation, liquid soap, air freshners and adequate availability of water always.
- **Weekly Tasks:** Clear cobwebs, clean doors and windows, kitchen walls,
- **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks.

II. Periodic Maintenance/ Renewal Activities

Apart from the routine maintenance work, periodic maintenance work shall be done by the Operator. All preventive maintenance work shall be listed and the time of their execution should be planned before hand at beginning of each year. For Periodic Maintenance/ Preventive Maintenance a register should be maintained specifying the dates & details of maintenance works undertaken. Further for Periodic Maintenance/ Preventive Maintenance

work should be so organized that there is little inconvenience to the Users of Project Facility:

S. No.	Periodic Maintenance Activities	Time limit for Maintenance
1	Repainting of furniture, signage delineators, markings etc.	As per requirement
2	Repainting of Buildings and all other structures.	As per requirement
3	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, cabins, booths etc.	As per requirement
4	Resurfacing of Pavement	Routine repairs plus cleaning & filling of joints as required from time to time.
5	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual.
6	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual. All Electric Meters shall checked once in a month to ensure that they are functioning and are showing correct readings.
7	Cleaning and disinfecting of water storage/ distribution tanks, water mains	Once in a month
8	Cleaning of manholes/ gully chambers/ inspection chambers and flushing of building sewers	Once in 6 (six) months
9	Collection of water samples for physical, chemical and bacteriological analysis of water	Once every 15 (fifteen) days
10	Roof Inspection	Once in a year and before monsoon to see and repair whether roof drainage is functioning properly. Also check for presence of leaks and historical information for leaks during long continued rain, leaks occurring every rain etc. Check exposure of bituminous coating due to loose or missing gravel or slag and fix it on an annual basis. Also check all flashing for wind damage, loss of bituminous coating, loose seams and edges, damaged caulking and curling, and exposed edges
11	Water proofing of roofs, terraces,	Once in 3 (three) years

	interior/exterior walls, and tanks etc.	
12	Analogous addressable fire detection, fire alarm and firefighting system	Once in a year including conducting of mock drill.
13	Air Conditioning system	Twice during the season with cleaning of filters at regular intervals.
14	Pest Control	Atleast twice in a year or more frequently if required.

- Any fault in the building amenities which may include but not limited to Air conditioners, CCTV cameras, fire safety arrangements/ alarms, lifts, solar panels, switches, receptacles, wiring, other electrical equipments etc. shall be identified, tested and repaired within 24 hours of detection to prevent accidents.
- **Suggestions extended by NODAL OFFICER** – Operator shall comply with the suggestions/ directions given/ issued by the Nodal Officer from time to time within the time specified in this Schedule and where no time is specified then within such time as allowed by the Nodal Officer.

III. Major Maintenance Work

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

2.6 PREPAREDNESS AND PREVENTION

- i. The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Project Site. The Operator shall ensure that the Project Facility is operated and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. The Operator shall provide and maintain requisite equipment including firefighting and adequate water supply, internal communication system & alarms and provisions for contacting local medical and police authorities in case of emergency.
- ii. The Operator shall prepare and maintain emergency preparedness plan for the Project Facility and train all the personnel working there in order to respond appropriately in such situation and carry out these plans in the event of an actual emergency.
- iii. Fire extinguisher, fire alarms and hydrants need to be maintained regularly by the Operator at the Project Facility. Any damage to firefighting equipments installed inside the Project Facility or in open space shall be rectified within 2 (two) days of detection. Fire extinguishers shall be replaced before the end of its expiry date.
- iv. In case of any emergency, the Operator should report and inform about the incident expeditiously to the Authority and the other concerned authorities.

- v. The Operator should remove visitors and provide them with a safe passage in case of any emergency.
- vi. Co-ordinate with the emergency services such as, trauma centers, hospitals, police stations, fire brigade office, etc.
- vii. Reorganize the operations with proper information, sufficient number or warning regulatory, information signs, displays or temporary change in visitor's circulation.
- viii. Attend to the affected area using manpower, machinery at The Operator's disposal.
- ix. Clear the affected site and arrange for repairs and make a report of the incident to the Authority.
- x. The Operator shall evolve a comprehensive recovery plan for the restoration of the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:
 - a. Identify and prioritize essential facility functions for recovery.
 - b. Procedures for repairs / rebuilding / modifications, if any.
 - c. Contingencies for alternate data processing / protection of vital records.
 - d. Identify possible alternative traffic circulation / parking plans.
 - e. Documentation process for after action reports.

Schedule-F: List of Prohibited Activities

The following activities shall be strictly prohibited in the Project Facility:

1. Gambling activities;
2. Smoking and sale/ purchase of tobacco products;
3. Serving and consuming of non-vegetarian food;
4. Serving and consuming of alcoholic beverages and products;
5. Installing any mobile/ telecom tower(s);
6. Holding political rallies or congregations;
7. Any activity that is unlawful/ illegal or deemed unlawful under any Indian Act or legislation;
8. Any activity prohibited by the Temple Trust.

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Schedule-G: Vesting Certificate

1. The Temple Trust Mata Shri Chintpurni Ji (the “**Authority**”) refers to the Concession Agreement dated _____ (the “**Agreement**”) entered in to between the Authority and M/s _____ (the “**Operator**”) for “Operation & Management of Shri Chintpurni Sadan Block-C, District Una, (A Commercial Complex-Hotel & Restaurant) in Himachal Pradesh on PPP mode” (the “**Project**”).
2. The Authority hereby acknowledges compliance and fulfillment by the Operator of the Divestment Requirements set forth in Article 16 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired the management control of the Project Facility and all interest of the Operator in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be constructed or interpreted as waiving the obligation of the Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Operator in any manner of the same.

Signed this _____ day of _____ 20____ at _____.

SIGNED, SEALED AND DELIVERED

For and on behalf of Temple Trust Mata Shri Chintpurni Ji by:

(Signature)

(Name)

(Designation)

(Address)

Schedule-H: List of Installed Items in the Existing Property
(pursuant to preparation of Joint Inventory - Site)

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