

REQUEST FOR PROPOSAL

FOR

DEVELOPMENT OF MULTI-STOREY PARKING-CUM-COMMERCIAL COMPLEX AT U-BLOCK, MANDI, HIMACHAL PRADESH ON PPP MODE



ISSUED BY:

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

2020



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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)	
3	VOLUME III (SCHEDULES TO 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 Consortium
 - IV. Joint Bidding Document
 - V. Letter comprising the Financial Bid
 - VI. Bank Guarantee for Bid Security
 - VII. Certificate reg. compliance with Restrictions under GFRs
- II. The Draft Concession Agreement provided in Volume–II and Schedules to Draft Concession Agreement provided in Volume – III, 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: 11th December, 2020**

The General Manager, Himachal Pradesh Infrastructure Development Board, Himachal Pradesh (the “**HPIDB**”) on behalf of the Municipal Commissioner, Municipal Corporation, Mandi (the “**Authority**”), invites interested entities to participate in the bidding process for the **Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, 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	Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, 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.50,00,000 (Rupees Fifty Lakhs Only)
5.	Bid Document on portal, i.e., Start Date & Time	Start Date: 14th December, 2020 from 10:00 A.M. IST 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	4th January, 2021 upto 03:00 P.M. IST by email on hpdb-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	5th January, 2021 at 11:00 A.M. IST , at Shimla, Himachal Pradesh or online through Video Conferencing (<i>details will be provided later on the portal</i>)
8.	Date for response to Pre-Bid queries	On or before 15th January, 2021 on the portal: http://himachalservices.nic.in/hpidb/
9.	Last date for Bid submission (Bid Due Date)	12th February, 2021 till 04:00 P.M. IST
10.	Date & Time for opening of Technical Bid	12th February, 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 Municipal Corporation, Mandi 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 Municipal Corporation, Mandi 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 Municipal Corporation, Mandi 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 Municipal Corporation, Mandi, 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 Municipal Corporation, Mandi accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The HPIDB and the Municipal Corporation, Mandi, 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 Municipal Corporation, Mandi 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.

The HPIDB and the Municipal Corporation, Mandi 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 Successful Bidder or Developer, 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 Municipal Corporation, Mandior 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 Municipal Corporation, Mandishall 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.

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VOLUME I – INFORMATION TO BIDDERS

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OFFICE OF THE MUNICIPAL CORPORATION, MANDI, H.P.

1. INTRODUCTION

1.1. BACKGROUND

- 1.1.1. The Govt. of Himachal Pradesh (the “**GoHP**”) envisages the development of a Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi. The Municipal Corporation, Mandi, represented by its Commissioner (the “**Authority**”) is entrusted with the development related matters of the areas falling within the jurisdiction of the Mandi Municipal Corporation and providing basic civic amenities and performing certain obligatory duties entrusted upon them including provision for car parking, etc. As part of this, the Authority intends to select a developer for “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**”) to address the growing problem of parking in the city of Mandi and ensure that the parking needs of the city are duly met.
- 1.1.2. 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 Department of Urban Development, Govt. of Himachal Pradesh for managing the bidding process on behalf of the Municipal Corporation, Mandi for “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on Public Private Partnership (PPP) mode**”.
- 1.1.3. The proposed site of the Project is situated in Muhal Suhara/366/6, Tehsil Sadar, District Mandi, H.P. and measures approximately 4,509 Sq. Mtrs (05-11-12 Bighas). The Project Site is free from highest flood level of river Beas as well as Skodi Khad and also from ASI monuments.
- 1.1.4. HPIDB seek bid through the present RFP from interested and eligible entities (the “**Bidder**” which expression shall, unless repugnant to the context, include the Members of the Consortium 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.
- 1.1.5. The Selected Bidder will be required to incorporate a Special Purpose Vehicle (“**SPV**”) under the provisions of the Companies Act, 2013 (the “**Concessionaire**”) who shall be responsible for designing, development, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by HPIDB as part of the Bidding Documents pursuant hereto.
- 1.1.6. The Concession Agreement sets forth the detailed terms and conditions for the grant of concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”). The period of Concession is 30 years (the “**Concession Period**”) which is inclusive of a Construction Period of 24 (twenty-four) months for



construction/ development and commissioning of the Multi-Storey Parking-cum-Commercial Complex.

- 1.1.7. The Concessionaire shall be solely responsible and liable for bringing in requisite funds from time to time towards financing the Project and achieving Financial Closure.
- 1.1.8. The broad scope of work of the Concessionaire includes planning, designing, development, engineering, financing, procurement, construction, operation and maintenance of a Multi-Storey Parking-cum-Commercial Complex as per applicable development norms and FAR Height (which currently is 1.5 for commercial area), Set-back permitted by GoHP and/ or local authority along with development of any additional value added services (optional) with prior approval of the Authority. It is an essential condition of this tender that the proposed car parking (conventional parking with ramps) should be designed in such a manner that a minimum of 500 parking spaces for cars, jeeps, LMV, etc. are available for use of public plus a minimum of 100 car parking spaces are available for the commercial complex area at all times during the Concession Period. In return, the Concessionaire shall be entitled to (i) demand, levy, collect, enforce, retain and appropriate Parking Fees from all the Users using the Parking Complex at rates determined by the Authority; (ii) demand, levy, collect, enforce, retain and appropriate revenues such as rentals from commercial complex, advertisement, service charges from the commercial complex, at the rates solely determined by the Concessionaire, in accordance with the provisions of the Concession Agreement and the Schedules thereof. At the end of the Concession Period, the Concessionaire shall transfer the Project Site and the Project developed thereon with all the fixtures, furniture and assets permanently attached to it back to the Authority (MC, Mandi) or its nominated agency, vacant and free of all encumbrances, without any obligation of the Authority to make any payment in respect thereof. The prospective Bidders shall note that the Concessionaire shall not be allowed to operationalize the Commercial Area unless 500 equivalent car parking spaces for assured public parking space in the Car Parking component of the Project (with each car space measuring at least 28 square metres) is made open to public use in terms of the Concession Agreement.

Right of First Refusal:

Provided, however, at the end of the Concession Period by way of efflux of time, the Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters as per its sole discretion. In the event of re-bidding, if the Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful bidder by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required, then the Concessionaire shall be provided with the right of first refusal to match the bid of the H1/ L1 bidder (this right to be given only subject to the condition that the Concessionaire is/ was not in default in respect of its obligations under the Agreement and its performance is considered satisfactory by the Authority) and to enter into fresh agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal



and the provisions related thereto in the bidding documents shall be determined by the Authority at its sole discretion.

1.1.9. In consideration of the rights, privileges and interest granted by the Authority to the Concessionaire in terms of the Bidding Documents particularly the Concession Agreement, the Concessionaire shall pay to the Authority the following :

- (i) Upfront Premium of Rs.2 Crores (Rupees Two Crores Only) payable by way of 5 equal installments of Rs.40 Lakhs (Rupees Forty Lakhs Only) each. The stages of payment of each installment are specified in the Concession Agreement;
- (ii) Annual Concession Fee (to be quoted by the Bidders and accepted by HPIDB) payable bi-annually starting from the Commercial Operations Date (*as specified in the Concession Agreement*); and
- (iii) Payment of all taxes, levies etc. as may be applicable on the Upfront Premium and Annual Concession Fee.

In addition, the Selected Bidder shall within 21 (twenty one) days of issuance of the NOA, shall also make a payment of Rs.50,00,000/- (Rupees Fifty Lakh only) net of taxes which shall be paid separately by the Selected Bidder, in the form of Demand Draft, in favour of “**Himachal Pradesh Infrastructure Development Board**”, payable at Shimla, Himachal Pradesh against expenses incurred in respect of the procurement process for the Project (“**Project Development Fee**”). The Project Development Fee shall be irrevocable & non-refundable and shall be payable in two equal installments at the following two stages:

- (i) within 21 (twenty one) days of LoA; and
- (ii) upon achievement of Compliance Date

1.1.10. 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 Developer/Concessionaire 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.

1.1.11. 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 Bids 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.
- 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.50,00,000/- (Rupees Fifty 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 for which claim period shall be of at least 60 (sixty) days. 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 Annual Concession Fee payable to the Authority for award of the Concession (the “**Concession Fee**”). The payment of Concession Fee shall commence from Commercial Operations Date and shall be paid in advance, throughout the balance Concession Period, by way of bi-annual installments. The Annual Concession Fee shall be increased by 5% (five percent) yearly over the previous year’s Annual Concession Fee amount. The mode and manner of payment of Annual Concession Fee is specified in the draft Concession Agreement.
- 1.2.9 The 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 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 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 Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on PPP mode”

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	14 th December, 2020 from 10:00 A.M. IST on the portal: http://himachalservices.nic.in/hpidb/
Last date for receiving queries	4 th January, 2021 upto 03:00 P.M. IST by email on hpdb-hp@nic.in or by post to the General Manager, HPIDB at the address of HPIDB mentioned in this RFP
Pre – Bid meeting/ conference	05 th January, 2021 from 11:00 A.M. IST, in the office of



	HPIDB, Shimla, Himachal Pradesh or online through Video Conferencing (<i>details will be provided later on the portal</i>)
Date for response to Pre-Bid queries	On or before 15th January, 2021 on the portal: http://himachalservices.nic.in/hpidb
Bid Due Date	12th February, 2021 till 04:00 P.M. IST
Date & Time of opening of Technical Bids	12th February, 2021 at 04:30 P.M. IST in the office of HPIDB, Shimla, Himachal Pradesh 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
Validity of Bids	120 days of Bid Due Date
Furnishing of Project Development Fee	1 st Installment within 3 weeks from the date of issuance of NOA
Submission of Performance Security	Within 3 weeks from the date of issuance of NOA
Signing of Agreement	Within 45 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 “**Consortium**”), joining together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, 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 Consortium.
- (ii) A Bidder may be a natural person, private entity, partnership firm, company or society or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.5 herein below.
- (iii) Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020. **For details, the Bidder is advised to refer the**



beforementioned Order. Non-compliance with the Order will cause the Bid of such Bidder to be rejected out rightly.

- (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 or its Member and any other Bidder or its Member have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder or its Member (or any shareholder thereof having a shareholding of more than 25% (twenty five per cent) of the paid up and subscribed share capital of such Bidder or Member, (as the case may be) in the other Bidder or its Member is less than 25% (twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.2.1(a) indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has share holding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; 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 Concessionaire, 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 Concessionaire 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 Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium.

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 Qualification:** The Bidder to be eligible for pre-qualification and short-listing, shall have to satisfy the following conditions:
- (i) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder in the past 7 (seven) years preceding the Bid Due Date should have completed construction/ development¹ of Eligible Projects with each such Eligible Project having total capital cost of not less than **Rs.10 Crores** (Rupees Ten Crores Only) such that the sum total of the Eligible Projects whose experience is demonstrated by the Bidder is more than **Rs.60 crores** (Rupees Sixty Crores Only).

For the purpose of this Clause 2.2.2(i), “**Eligible Projects**” means construction/ development of:

- (a) multi-level car parking complexes (having more than 3 stories); and/ or

¹ In case of Eligible Projects on PPP mode, development means and includes Operation and Maintenance of the Eligible Project for a period of atleast one year after issuance of construction completion certificate.



- (b) high-rise real estate projects/ commercial/ institutional/ educational/ industrial buildings with each having more than 3 stories; and/ or
- (c) civil structures (i.e. ROBs, RUBs, Flyovers, Major Bridges and tunnels only)

either on EPC mode or PPP mode.

- (ii) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of **Rs.15 crores** (Rupees Fifteen Crores Only) at the close of the preceding financial year. Further, the Bidder should be a net profit making entity for the last 3 (three) financial years preceding the Bid Due Date.

In case of a Consortium, the combined technical & financial capacity of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of full commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost as defined in the Concession Agreement.

OR

- (B) **High Net Worth Route:** The Bidder having a Net-worth of Rs.80 Crores (Rupees Eighty Crores Only)& above, as on 31st March 2020 will be exempted from the Technical Capacity & Financial Capacity as per Clause 2.2.2 (A) above. However, such Bidder shall have to demonstrate this Net Worth independently, without forming a Joint Venture/ Consortium.

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 auditors² or completion certificate(s) from the concerned client(s) stating the capital cost of the Eligible Project payments made/ received and works commissioned, as the case may be, along with any other relevant documents in respect of the Eligible Projects to support the claim of the Bidder, during the past 7 (seven) years as specified in paragraph 2.2.2 (A) (i) above³. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), 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 or the client;

and

² In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFP.

³ Not required in case the Bidder is applying under the High Net Worth Route.



- (ii) Certificate(s) from its statutory auditors specifying the 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).

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 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 a society or a trust:** the sum of available corpus and reserves.
- iii **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.
- iv **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 Consortium, 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 Consortium shall ensure that Power of Attorney is legalised/apostille 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 Where the Bidder is a single entity, it will be required to form an appropriate Special Purpose Vehicle, incorporated under the Companies Act, 2013 (the “**SPV**”) with equity shareholding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV till the second anniversary of the commercial operations date and 26% (twenty six percent) thereafter for the balance Concession Period, to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium⁴, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (i) Number of members in a consortium shall not exceed 3 (three);
- (ii) Subject to the provisions of Clause 2.2.5 (i) above, the bid should contain the information required for each member of the Consortium;
- (iii) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall

⁴ Not allowed in case the Bidder is applying under the High Net Worth Route.



be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;

- (iv) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and technical obligations;
- (v) An individual Bidder cannot at the same time be member of a Consortium applying for the Bid. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for the Bid;
- (vi) The members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (vii) Members of the Consortium 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/ Concessionaire in terms of the Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (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 Consortium shall be liable jointly and severally for all obligations of the Concessionaire 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 each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of full commercial operations of the Project, hold equity share capital not less than:
 - (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and
 - (ii) 5% (five per cent) of the Total Project Cost as defined in the Concession Agreement;
 - (e) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the full commercial operations date of the Project and 26% (twenty six per cent) thereafter for the balance Concession Period; 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 Consortium.



2.2.7 A Bidder including any Consortium 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 Consortium 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 Consortium 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 Consortium) 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 Consortium, 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.

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 CONSORTIUM

- 2.3.1 Change in the composition of a Consortium will not be permitted by HPIDB during the Bidding process.

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 Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, 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, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, 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 Concessionaire.

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 Consortium, then the entire Consortium 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 Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/ Concessionaire 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 endeavor 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 endeavor 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/ Modification.
- 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;
- (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 Consortium as per the format at Appendix-III;
- (iv) if applicable, the Jt. Bidding Agreement, in case of a Consortium, 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 1.2.7;
- (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 (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; and
- (xi) Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-VII shall be submitted by the Bidder with the Bid duly signed by Authorised signatory & shall be part of the Concession Agreement.

(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 “Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on PPP basis”

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 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. The Annual Concession Fee shall escalate at the rate of 5% (five percent) annually over the last year's applicable amount.

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 Consortium shall furnish as part of its Bid, a Bid Security of Rs.50,00,000/- (Rupees FiftyLakhsOnly) 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 with a claim period of at least 60 (sixty) days, 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 Successful 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). Bidders may by specific instructions in writing to the HPIDB give the name and address of the person in whose favour the said Demand Draft/Cheque shall be drawn by the HPIDB for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.



- 2.21.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Selected Bidder signing the Concession Agreement, furnishing the Performance Security and Project Development Fee 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 Successful 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;
 - (c) to make payment of 50% of Project Development Fee within 21 (twenty one) days from the date of issuance of Notice of Award; and/or
 - (d) to furnish the Performance Security within a period of 3 weeks from the date of issuance of Notice of Award.
 - (v) 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 1.2.7;
 - (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 Consortium), 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 (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 furnish the details of having experience in successfully completing construction/ development of Eligible Projects in the last 7 (seven) financial years immediately preceding the Bid Due Date. Provided that each such Eligible Project shall have a capital cost of at least Rs.10 crores each and further provided that the sum total of the Eligible Projects whose experience is demonstrated by the Bidder in its Bid is more than **Rs.60 crores.**(the "**Eligible Experience**"):

Provided that if the Eligible Project was completed by the Bidder or Member as Joint Venture/ Consortium member, then value of such completed Eligible Project shall only be considered to the extent of its percentage share in that Joint Venture/ Consortium for the purpose of evaluation.

3.4.3 The Bidder should provide necessary information in relation to Eligible Experience as per the format at Annex-II of Appendix-I along with evidence in support of claim of Technical Capacity in the form of successful completion certificates from respective clients or the certificate(s) of its statutory auditor/ chartered accountant in support thereof as proof.

3.4.4 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.4.5 For experience of Eligible Projects developed on PPP mode, the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed.

3.5 FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION

3.5.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

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 shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.



- 3.5.3 The Bidder must establish minimum Net Worth specified in Clause 2.2.2 (A) (ii), and provide details as per format at Annex-III of **Appendix-I**. Provided further, the financial capacity score of the Bidder shall be computed as a weighted average of the financial capacity of a Member and its proposed equity stake (%) in the Consortium.

Illustration:

For illustration and avoidance of any doubts, the following method is placed in clarification:

If Company A (Net-Worth: Rs 100 crores) & Company B (Net-Worth: Rs 50 crores) in a Consortium with shareholding of A as 60% and B as 40% then the Weighted Financial Score of the Consortium shall be:

For Weighted Financial Score

$$100 \times 60\% + 50 \times 40\% = 80 \text{ Crores}$$

- 3.5.4 The Bidder applying through the High Net Worth Route must establish that it has the Net-worth of Rs.80 crores (Rupees EightyCrores Only) or above, as on March 31, 2020 in terms of Clause 2.2.2(B), and accordingly provide details as per format at Annex-III of Appendix-I duly certified by its statutory auditor.

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 Consortium) 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 SUCCESSFUL 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:

- i. invite fresh Bids from such Tied Bidders; or
- ii. declare as successful such Tied Bidder whose Net Worth has been evaluated to be higher than the other Tied Bidder; or
- iii. 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
- iv. 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;
- (ii) Incorporate a SPV as a company under the Companies Act, 2013 to act as the Concessionaire who shall sign the Concession Agreement with the Authority; and
- (iii) Submit 1st installment of Project Development Fee to HPIDB.

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

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/ Concessionaire, as the case may be, if it determines that the Bidder or Developer/ Concessionaire, 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 Concessionaire, 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 Concessionaire 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 Concessionaire, 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,
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.

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APPENDICES

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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 Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh.

Dear Sir,

- 1) With reference to the RFP document dated⁵, 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 Consortium 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:
 - (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

⁵All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.



- 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 Consortium/ proposed Consortium 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 Consortium, are not a Member of any other Consortium 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 Consortium 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 Consortium 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 Consortium 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 Consortium, 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.50,00,000/- (Rupees Fifty Lakhs Only) to HPIDB in accordance with Clause 1.2.7 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 Project Development Fee, Upfront Premium and 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 agree and understand that in case the Project gets awarded to me/us, I/we shall be responsible for managing of the Multi-Storey Parking-cum-Commercial Complex with regards to third parties without any liability of the Authority.
- 25) 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.
- 26) I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
- 27) I/ We hereby declare and confirm that I/ we/ any Member of the Consortium 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/ Concessionaire under the Concession Agreement till the end of the Agreement Period in accordance with the Agreement.}⁶

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

⁶ Omit if the Bidder is not a Consortium.



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.

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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 Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (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 Consortium
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 Consortium:

Name of Bidder/ member of Consortium:

Sr. No.	Criteria	Yes	No
1.	Has the Bidder/ member of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT 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 Consortium 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 Consortium (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)

Details of Eligible Projects:

Name of Bidder/ Consortium Member:

ITEM	PARTICULARS OF THE PROJECT
Name of the Eligible Project	
Give a brief description of the work undertaken relevant to the Project	
Entity for which the Eligible Project was constructed/ developed: Name: Address: Name of Contact Person: Phone No. of the Contact Person: Email ID of the Contact Person:	
Location	
Capital Cost of Eligible Project(Excluding land cost)	
Date of commencement of Eligible Project	
Date of completion of Eligible Project in all respects	
Source of funds of the Eligible Project	
Mode (BOT, EPC, Item Rate, etc.)	
Equity shareholding of the Bidder/ Member in the in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed	

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex which have been undertaken by the Bidder/ Member in its own name and/ or by a project company in which the Bidder/ Member has a share/ equity of atleast 26%. The projects cited must comply with the eligibility criteria specified in the RFP document.
2. A separate sheet should be filled for each Eligible Project.
3. Name, address and contact details of owner/ Authority/ Agency (i.e. employer, concession grantor, etc.) may be provided.



4. The date of completion of construction should be indicated. Only such projects whose construction has been completed in all respects shall be considered for the purpose of evaluation.
5. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
6. Completion Certificate from the concerned client/ entity for whom the work undertaken must be furnished for each Eligible Project.
7. The sum total of the capital costs of each of the Eligible Projects cited by the Bidder in its Bid as per this format, should cumulatively aggregate to a sum of more than Rs.60 Crores (Rupees Sixty Crores Only).
8. Certificate(s) from the Statutory Auditor as per the format prescribed below in respect of each Eligible Project :

Format for Certificate(s) from the Statutory Auditor to be procured and annexed as proof of the claim made in respect of the Eligible Projects in terms of Clause 2.2.2, 2.2.3 and 3.4 of the RFP document:

Format 1 for Eligible Projects executed on PPP mode

Certificate from the Statutory Auditor regarding PPP projects⁷	
Based on its books of accounts and other published information authenticated by it, this is to certify that _____ (name of the Bidder/ Member) is/ was an equity shareholder in _____ (title of the project company) and holds/ held Rs. _____ cr. (Rupees _____ crores) of equity (which constitutes _____% ⁸ of the total paid up and subscribed equity capital) of the project company from _____ (date) to _____ (date) ⁹ . The project was commissioned on _____ (date of commissioning of the project).	
We further certify that the total capital cost of the project pursuant to completion of construction is Rs. _____ Cr. (Rupees _____ crores).	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the authorized signatory)
Date:	

⁷ 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.

⁸The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed.

⁹ In case the project is owned by the Bidder company, this language may be suitably modified to read :

“It is certified that _____ (name of Bidder) constructed and/ or owned the _____ (name of project) from _____ (date) to _____ (date).”



Format 2 for Eligible Projects executed on EPC mode

Certificate from the Statutory Auditor regarding construction works

Based on its books of accounts and other published information authenticated by it, {this is to certify that _____ (name of the Bidder/ Member) was engaged by _____ (name of the client) to execute _____ (name of project). The construction of the project commenced on _____ (date) and the project was commissioned on _____ (date, if any). It is certified that _____ (name of the Bidder/ Member) received/ paid Rs. _____ Cr. (Rupees _____ crores) by way of payment for the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs..... crores (Rupees.....Crores) pursuant to completion of construction work.

{It is further certified that the amount specified above is restricted to the share of the Bidder who undertook these works as a partner or a member of joint venture/ Consortium}¹⁰.

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorized signatory)

Date:

¹⁰ This certification should only be provided in case of jobs/ contracts, which are executed as part of a partnership/ joint venture/ consortium. The payments indicated in the certificate should be restricted to the share of Bidder in such partnership/ joint venture/ consortium. This portion may be omitted if the contract did not involve a partnership/ joint venture/ consortium. In case where work is not executed by partnership/ joint venture/ consortium, this paragraph may be deleted.

**FINANCIAL CAPACITY OF THE BIDDER**

(Refer to Clause 2.2.2 of the RFP)

(In Rs. crores)

Bidder type ¹¹	Year			Net Worth ¹²
	1	2	3	As on March 31, 2020
Single entity Bidder				
Bidder applying through High Net-worth Route				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				
TOTAL				

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/ Consortium Member who's Net-worth as on March 31, 2020 is Rs. _____ (Rupees in words).

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

(Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

Instructions:

- The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) financial years preceding the Bid Due Date. The financial statements shall:
 - reflect the financial situation of the Bidder or Consortium Members;
 - be audited by a statutory auditor;
 - be complete, including all notes to the financial statements; and
 - correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
- In the case of a Consortium, each Member who is meeting the Financial Capacity criteria should provide this Annex.
- The Bidder shall also provide the name and address of the Bankers to HPIDB.

¹¹ A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

¹² The Bidder/ Member should provide details of its own Financial Capability.



STATEMENT OF LEGAL CAPACITY

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

Ref.

Date:

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

Bid for: “Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on PPP Mode”

Dear Sir,

We hereby confirm that we/ our members in the Consortium (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 Consortium.*

We have agreed that (insert individual’s name) will act as our representative/ will act as the representative of the Consortium 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 Consortium 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 “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on 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 Municipal Corporation Mandi, 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 Municipal Corporation, Mandi.

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.*

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APPENDIX-III

Power of Attorney for Lead Member of Consortium

(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 “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on PPP Mode**” (the “**Project**”)

And Whereas,, and (collectively the “**Consortium**”) being Members of the Consortium 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 Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’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 Consortium, as the Lead Member and true and lawful attorney of the Consortium (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 Consortium and any one of us during the bidding process and, in the event the Consortium 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 Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the qualification of the Consortium 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 Consortium and generally to represent the Consortium in all its dealings with HPIDB and/ or Municipal Corporation Mandi, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Municipal Corporation Mandi.

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

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 Consortium)

(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)

AND

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

The above mentioned parties of the FIRST, SECOND, and THIRD PART are collectively referred to as the “**Parties**” and each is individually referred to 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 Government of Himachal Pradesh for undertaking Project Development Activities on behalf of the Municipal Corporation Mandi for selection of Developer for “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on 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) Municipal Corporation, Mandi acting through its Commissioner (the “**Authority**”) will sign the Concession Agreement with the Concessionaire;

[§]The number of Parties will be shown here, as applicable, subject however to a maximum of 3 (three).



- (D) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (E) It is a necessary condition under the RFP document that the members of the Consortium 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. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) 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 Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Companies Act 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire 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 Consortium and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding process and until the Agreement Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Member of the Consortium; and}
- {(c) Party of the Third Part shall be {the Member of the Consortium. }

5. Joint and Several Liability

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. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:



First Party:
Second Party:
{Third Party:}

- 6.2 The Parties undertake that each of the members, whose experience has been reckoned shall subscribe to a minimum of 26% (twenty six per cent) paid up and subscribed equity of the SPV at all times and 5% (five percent) of the Total Project Cost.
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.1 above shall, for a period of 2 (two) years from the date of full commercial operation date of the Project, hold subscribed and paid up equity share capital of SPV of not less than (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operations date of the Project.
- 6.5 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 Consortium 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 Consortium Members are fully discharged under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium 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)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(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 Consortium 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.*

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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 “Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on 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)** which shall be paid every year (by way of bi-annual installments of equal amount) commencing from Commercial Operations Date till the end of the Concession Period as per the terms and conditions contained in the Concession Agreement. The Annual Concession Fee will be increased @ 5% every year over the previous year’s Annual Concession Fee.
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



APPENDIX-VI

Bank Guarantee for Bid Security (Refer Clause 1.2.7 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/ Consortium¹³} (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 “**Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on 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.50,00,000/- (Rupees Fifty 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 liability under this Guarantee shall be restricted to an amount not exceeding **Rs.50,00,000/- (Rupees Fifty 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 the claim period of 60 (sixty) days 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.

¹³Applicable only in the case of Bidder applying as Joint Venture/ Consortium.



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.50,00,000/- (Rupees Fifty 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 of 60 days)].



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)

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APPENDIX-VII

Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) *(Refer Clause 2.12.2(A)(xi) of RFP)*

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

**Sub: BID for “Development of Multi-Storey Parking-cum-Commercial Complex at U-Block,
Mandi, Himachal Pradesh on PPP Mode” (the “Project”)**

Dear Sir,

With reference to your RFP document dated *** **\$, I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

- (a) *I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;*
- (b) *I certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority;*
- (c) *I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.*

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)
Name and seal of Bidder/Lead Member

Notes:

{Where applicable, evidence of valid registration by the Competent Authority shall be attached}

In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

REQUEST FOR PROPOSAL

FOR

DEVELOPMENT OF MULTI STOREY PARKING-CUM-COMMERCIAL COMPLEX AT U-BLOCK, MANDI, HIMACHAL PRADESH ON PPP MODE

VOLUME II – DRAFT CONCESSION AGREEMENT





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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT**¹ is entered into on this the [] day of [] (Month), 202* at Mandi, Himachal Pradesh

BETWEEN

The **Municipal Corporation, Mandi** having its office at Mandi, Himachal Pradesh (hereinafter referred to as the “**Authority**”), acting through its Commissioner which expression shall, unless the context otherwise requires, include its administrators, successors and assigns of **ONE PART**;

AND

M/s. {.....}², a Company incorporated under the Companies Act, 2013 and having its registered office at acting through its (hereinafter referred to as the “**Concessionaire**”) which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes of the **SECOND PART**;

AND

M/s. _____, a {Company/ LLP/ Partnership} incorporated under the {name of the applicable Act} and having its registered office at _____ acting through its _____ (hereinafter referred to as the “**Selected Bidder**”) which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes of the **THIRD PART**

WHEREAS

- A. The Authority had decided to develop a Multi-Storey Parking-cum-Commercial Complex at Mandi through Public Private Participation on **Design, Build, Finance, Operate and Transfer (DBFOT) basis** (“*the Project*”) on land comprising of an area of **4509 sq. mtrs**, whose ownership vests with the Authority.
- B. With an objective to seek private sector participation in the development of the aforesaid Project, the Himachal Pradesh Infrastructure Development Board (HPIDB) undertook, for and on behalf of the Authority, the process of selection of a suitable Bidder through competitive bidding, after issuing a Request for Proposal document (**RFP**) dated, **2020** inviting Bids/ Proposals from prospective Bidders to implement the said Project.
- C. On evaluation of the submitted Bids, HPIDB accepted the Bid of M/s {name of Selected Bidder/ Consortium comprising of M/s _____ as Lead Member, M/s _____ & M/s _____ as Members} (the “**Selected Bidder**”) having quoted the highest value of the **Annual Concession Fee of Rs..... (Rupees in words) payable to the Authority** and issued Notice of Award (NOA) bearing no. _____ dated _____ to it, which requiring the Selected Bidder to inter alia :

¹ Serially numbered footnotes in this Agreement are for guidance of the Authority and should be omitted from the draft Agreement forming part of Bid Documents. Footnotes marked “\$” shall be retained in the draft Agreement.

² All provisions enclosed in curly parenthesis shall be retained in the Bid Documents and shall be modified as required after the selected bidder has been identified.



- (i) to incorporate the Concessionaire as a special purpose company under the Companies Act, 2013;
- (ii) furnish Performance Security by way of an unconditional and irrevocable Bank Guarantee in favour of The Commissioner, Municipal Corporation, Mandi;
- (iii) pay Project Development Fee to HPIDB; and
- (iv) execute this Agreement within 45 (forty five) days of the date of issue of NOA pursuant to complying with the aforesaid requirements from sr. no. (i) to (iii).

D. The Selected Bidder has since promoted and incorporated a limited liability company under the Companies Act 2013 i.e. to act as the Concessionaire, and had requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the NOA, including the obligation to enter into a Concession Agreement pursuant to issuance of the NOA for executing the Project.

E. By its letter dated _____ the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder or the Consortium under the NOA, including the obligation to enter into this Concession Agreement pursuant to issuance of the NOA for executing the Project. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion from the Indian Legal Counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.

F. The Authority had agreed to the said request of the Selected Bidder and the Concessionaire, and had accordingly entered into a Concession Agreement dated _____ with the Concessionaire and granted to the Concessionaire, the Concession on the mutually agreed terms and conditions for the Concession Period to (a) plan, design, engineer, finance, develop, construct, commission, operate and maintain the Project on a commercial basis, and (b) at the end of the Concession Period transfer back the Project Site including the Project Facility thereon to the Authority.

G. The Selected Bidder has furnished Construction Performance Security for an amount of Rs.2.80 Crores (Rupees Two Crores Eighty Lakhs Only) by way of unconditional and irrevocable Bank Guarantee no. _____ dated _____ as a security to ensure the performance of the obligations during the construction stage by the Concessionaire under this Agreement and also paid the first instalment of Project Development Fee amounting to Rs. 25.00 Lakhs (Rupees Twenty-Five Lakhs only) to HPIDB as a Condition Precedent to the signing of the Concession Agreement.

H. The Concessionaire hereby accepts the Concession hereby being granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

NOW THEREFORE, in view of the mutual promises and consideration set out herein, the Authority, the Concessionaire and the Selected Bidder (each individually referred to as “Party” hereto, and collectively the “Parties”) hereby agree to be bound by the provisions of this Concession Agreement.



ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them: -

- (i) **“Annual Concession Fee”** means as defined in Article 5.2 of the Concession Agreement.
- (ii) **“Applicable Laws”** means all laws which are applicable to the Project and/ or the Concessionaire extending to the State of Himachal Pradesh, having been enacted or brought into force by Government of India or GoHP including regulations, rules and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any Court of Record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.
- (iii) **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, registrations, filings or other authorisations of whatever nature, which is necessary for effective implementation of the Project, any approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement;
- (iv) **“Authority”** means Commissioner, Municipal Corporation, Mandi.
- (v) **“Board” or “HPIDB”** means the Himachal Pradesh Infrastructure Development Board established and functioning under the provisions of the Himachal Pradesh Infrastructure Development Act, 2001.
- (vi) **“Commercial Area” or “Commercial Complex”** means the area (*FAR upto 1.5 (or as approved by the Govt. of HP)*), to be commercially developed at the Project Site located at U-Block, Mandi as a part of the Project and includes developments as specified in **Schedule I** which the Concessionaire shall utilize for commercial purposes (including its maintenance and management) to generate revenue during the Concession Period.
- (vii) **“Commercial Area Charges”** means the license/ sub-license fee, advertisement revenues, charges, levies, tariffs, etc. all sources of revenue by whatever name called that are payable at any time and from time to time by any Person/ Users, using the Commercial Area, to the Concessionaire. Subject to the provisions hereof, the Concessionaire shall have the right to determine, demand, charge, collect, revise, retain and appropriate the Commercial Area Charges as per the applicable/ prevalent market driven rates.
- (viii) **“Commercial Operations”** means the commercial use of the Car Parking component and the Commercial Area (if developed) by charging, demanding, collecting, retaining and appropriating User Charges.
- (ix) **“Commercial Operations Date” or “COD”** means the date on which the Independent Engineer issues the Provisional Certificate or the Construction Completion



Certificate for the Car Parking (and Commercial Complex if developed by then), pursuant to which the Concessionaire commences the Commercial Operations.

- (x) **“Competent Authority/ies”** means any agency, authority, department, ministry, public or statutory Person of the Government of Himachal Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.
- (xi) **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Authority or the Concessionaire under Article 4.3.
- (xii) **“Concession”** shall have the meaning set forth in Article 3 and **“Concession Agreement”** means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, all other documents attached as annexures, the Notice of Award & Addendum to Notice of Award issued by HPIDB and the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the bidders).
- (xiii) **“Concessionaire”** means *M/s.*
_____, a Special Purpose Company
incorporated by the Selected Bidder under the Companies Act, 2013), having its
registered office at
_____ and
includes its subsidiaries, successors and permitted assigns.
- (xiv) **“Concessionaire's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include Plant and Materials.
- (xv) **“Concessionaire's Representative”** means the Person appointed by Concessionaire under Article 8.6.
- (xvi) **“Concession Period”** is the period of **30 (Thirty) years**, for which this Concession is granted, commencing from the Compliance Date.
- (xvii) **“Conditions Precedent”** means the conditions set out in Article 4 hereof.
- (xviii) **“Consortium Members”** means _____, _____ & _____
_____.
- (xix) **“Construction Completion Certificate”** means the Certificate issued under Article 14.1.
- (xx) **“Construction Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.



- (xxi) **“Construction Period”** means the period from the Compliance Date to the date of issue of Construction Completion Certificate in accordance with the provisions of Article 3.4, which involves the design, setting out, construction of works, erection and installation of equipments, commissioning, testing and certification of Construction Works.
- (xxii) **“Construction Completion Date”** means the date of actual completion of the Construction Works in accordance with the provisions of this Concession Agreement and when the Construction Completion Certificate is issued by Authority as per Article 14.1 pursuant to obtaining of all statutory approvals for operating the project from all Competent Authorities.
- (xxiii) **“Construction Works”** means all works and things necessary to complete the Project in accordance with this Agreement.
- (xxiv) **“Contractor”** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the construction contract, operation and maintenance contract or any other agreement or contract for construction, operation and/or maintenance of the Project Facility and/ or Project Facilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.
- (xxv) **“Cost”** means all expenditure properly incurred (or to be incurred) by the Concessionaire with respect to the Project, whether on or off the Project Site, including overheads and similar charges, but does not include profit.
- (xxvi) **“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;
 - (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
 - (c) not in any way be extended by any period of Suspension under this Agreement;
- provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval.
- (xxvii) **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.
- (xxviii) **“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 Senior Lenders under the Financing Documents for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment 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 the para (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 Senior Lenders, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority's Default; and
- (c) Any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/ or the Concessionaire, it shall for the purposes of this Concession 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 or after COD, shall in no case exceed 75% (seventy five percent) of the Total Project Cost.

- (xxix) **“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;
- (xxx) **“Design Approval Committee”** means the committee as constituted by Authority for approving the design of the Multi-Storey Parking-cum-Commercial Complex.
- (xxxi) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority or the Independent Engineer to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
- (xxxii) **“Dispute”** shall have the meaning set forth in Article 30.1.
- (xxxiii) **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 30 of this Concession Agreement.
- (xxxiv) **“Drawings”** means all of the drawings, calculations and documents pertaining to the Project and Project Facilities, and shall include 'as built' drawings of the Project and Project Facilities.
- (xxxv) **“Easementary Rights”** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.
- (xxxvi) **“Effective Date”** means the date of the signing of this Concession Agreement.
- (xxxvii) **“Encumbrances”** means 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any



insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.

- (xxxviii) **"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets.
- (xxxix) **"Escrow Account"** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account.
- (xl) **"Escrow Agreement"** shall have the meaning as set forth in Article 26.
- (xli) **"Escrow Bank"** shall have the meaning as set forth in Article 26.
- (xlii) **"Escrow Default"** shall have the meaning as set forth in **Schedule X**.
- (xliii) **"Event of Default"** means the Concessionaire Event of Default and/ or Authority Event of Default, as the case may be.
- (xliv) **"Equity"** means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purpose of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component.
- (xlv) **"Financial Closure"** means the fulfilment of all conditions precedent under the Financing Documents.
- (xlvi) **"Financial Model"** means the financial model adopted by Senior Lenders setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which the financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
- (xlvii) **"Financial Year"** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
- (xlviii) **"Financing Documents"** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.



- (xlix) **“Financing Package” or “Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding the Project.
- (l) **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 21.
- (li) **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Facilities in accordance with this Concession Agreement, Applicable Laws, and Applicable Permits, reliability, safety, environment protection, economy and efficiency.
- (lii) **“GoHP”** means the Government of the State 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.
- (liii) **“GOP”** means the Government of India.
- (liv) **“Independent Engineer”** means the engineer appointed under the provisions of Article 28.
- (lv) **“Lenders' Representative”** means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes.
- (lvi) **“Maintenance Board”** means the board appointed under the provisions of Article 29.
- (lvii) **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
- (lviii) **“Nominated Company”** means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement.
- (lix) **“Operation and Maintenance” or “O&M”** means the operation and maintenance of the Project Facility and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement.



- (lx) **“O&M Expenses”** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement
- (lxi) **“Operation and Maintenance Period”** is the period commencing from the Commercial Operations Date and terminating at the Transfer Date.
- (lxii) **“Party”** means any of the parties to this Concession Agreement.
- (lxiii) **“Parking” or “Car Parking”** means the multi-storey parking and such other parking area along with related facilities and amenities developed by the Concessionaire at the Project Facility whether enclosed or unenclosed, covered or open, sufficient in size to park 500 Vehicles (with ECS of 28 sq. mtrs.) for public use and shall include any additional car parking spaces developed at the Project Site at the sole discretion of the Concessionaire, together with driveway connecting the parking space with a street or alley and permitting ingress or egress of vehicles as per the provisions of this Agreement read with Schedules, Applicable Laws and Applicable Permits.
- (lxiv) **“Parking Fees”** means the fees for parking of Vehicles at the Car Parking developed at the Project Site that is payable at any time and from time to time by the Users to the Concessionaire for such parking. The Concessionaire shall have the right to demand and collect the Parking Fees as per the rates mentioned in **Schedule-VIII** and as notified by the Authority from time to time in accordance with the provision made therein.
- (lxv) **“Performance Standards”** means the standards for the operation and maintenance of the Multi-Storey Parking-cum-Commercial Complex, as set forth in **Schedule III** of the Concession Agreement.
- (lxvi) **“Performance Security”** means the Construction Performance Security and/ or Operation & Maintenance Performance Security as set out in **Schedule V(A) & V(B)** respectively from a scheduled bank acceptable to the Authority.
- (lxvii) **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
- (lxviii) **“Project”** shall mean planning, designing, construction, development, financing, operation, maintenance, management and Transfer of the Project Facility in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of Work of the Project;
- (lxix) **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, sub-license agreements/ arrangements, construction work agreement and maintenance agreements, in each case as amended, supplemented or otherwise modified from time to time but does not include the Escrow Agreement, Substitution Agreement or any agreement for procurement of goods and services involving consideration of upto Rs.10 lakhs.



- (lxx) **“Project Assets”** means all physical and other assets relating to and forming part of the Site including but not limited to; (a) rights over the Project Site in the form of license, sub-license, right-of-way or otherwise; (b) tangible assets such as civil works, foundation, all buildings, substructures and superstructures, equipments, drainage works, sign boards, communication systems, administrative offices, HVAC works, electrical works including sub-station at the Project Facility; (c) all rights of the Concessionaire under the Project Agreements; (d) financial assets, such as receivables, cash, security deposits, etc.; (d) insurance proceeds; and (e) Applicable Permits and authorizations relating to or in respect of the Project.
- (lxxi) **“Project Asset and Project Facilities Register”** means the register to be prepared and maintained by the Concessionaire as per Article 8.26.
- (lxxii) **“Project Facility”** means the Multi-Storey Parking and Commercial Area developed herein including all Project Facilities and other related structures, buildings, internal & external building services etc., common areas to be developed, designed, financed, constructed, upgraded, completed, commissioned, operated and maintained at the Project Site along with any Value Added Services and associated operations established by the Concessionaire in accordance with the provisions of the Concession Agreement.
- (lxxiii) **“Project Facilities”** means all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof, including but not limited to sewage and sanitation system, water supply, electricity distribution and supply, etc., situated on the Site, as prescribed in this Agreement including Schedules hereof and includes any additional facilities proposed by the Concessionaire as the part of its plans approved by the Authority.
- (lxxiv) **“Project Implementation Schedule”** means the Concessionaire’s Project Implementation Proposal and its time frame as accepted by the Authority in accordance with Article 8.7.
- (lxxv) **“Project Revenues”** means all sources of revenues and User Charges viz. Parking Fees, Service Charges, License Fee, Commercial Area Charges, etc. accruing to the Concessionaire from the Project.
- (lxxvi) **“Project Site” or “Site”** means the land measuring 4,509 Sq. Mtrs. at U-Block in Mandi and the rights in relation thereto, given by the Authority to the Concessionaire, as a licensee for undertaking the Project, on, under, in or through which the facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the Works are to be executed, more particularly delineated in **Schedule II** and depicted in the map annexed to such Schedule.
- (lxxvii) **“RFP”** means the Request for Proposal document issued by the HPIDB. The terms "RFP" and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
- (lxxviii) **“Right of Way”** means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement.



- (lxxix) **Scheduled Date of Construction Completion** shall have the meaning ascribed to it under Article 3.4.1.
- (lxxx) **“Schedules”** mean the Schedules to this Concession Agreement.
- (lxxxix) **“Scope of the Project”** shall have the meaning set forth in Article 2 of this Concession Agreement.
- (lxxxii) **“Senior Lenders”** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost.
- (lxxxiii) **“Service Charges”** means the charges, fees, rates, proceeds or any other sources of revenue or amounts of money by whatever name called that are payable at any time and from time to time by any Person to the Concessionaire pursuant to the utilization of Value Added Services.
- (lxxxiv) **“State”** means the State of Himachal Pradesh and the **“State Government”** means the government of that State.
- (lxxxv) **“Statutory Auditors”** means an Independent, recognised and reputable firm of the Chartered Accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force.
- (lxxxvi) **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Senior Lenders for meeting the Total Project Cost but does not include any interest thereon.
- (lxxxvii) **“Substitution Agreement”** means the agreement set out in **Schedule IX**.
- (lxxxviii) **“Sub-Licensee”** means the Person, selected by the Concessionaire, with whom the Concessionaire shall enter into a sub-license deed authorizing the said Person to utilize earmarked built-up space within the Commercial Complex strictly in accordance with the provisions of this Concession Agreement.
- (lxxxix) **“Sub-License Register”** shall have the meaning ascribed to it in Article 3.5.4 of this Concession Agreement.
- (xc) **“Tax”** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws.
- (xci) **“Technical Requirements”** means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the design, construction and implementation of the Project as set forth in the Schedules to this Concession Agreement and any alterations and modifications thereto.
- (xcii) **“Temporary Works”** means all temporary works of every kind (other than Concessionaire's Equipment) required for the construction, operation and maintenance of the project, services, facilities and the remedying of any defects relating thereto.



- (xciii) **“Tender”** means the Selected Bidder's quoted financial offer and detailed proposal for the Project, including the Concessionaire's Proposal, submitted to the Authority and as accepted by the Authority.
- (xciv) **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
- (xcv) **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
- (xcvi) **“Termination Payment”** means the amount payable by the Authority to the Concessionaire upon the termination of this Concession Agreement as are expressly provided for under this Agreement.
- (xcvii) **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
- (xcviii) **“Tests”** means the tests to be carried out as set forth in Article 13 to this Concession Agreement as per Applicable Laws and Good Industry Practice.
- (xcix) **“Total Project Cost”** means the lowest of the following:
- (a) The preliminary cost estimate as submitted by the Concessionaire, to the Authority, during the Conditions Precedent Period.
 - (b) Total Project Cost as set forth in the Financing Documents.
 - (c) Actual Capital cost of the Project upon completion of the Project as certified by the Statutory Auditors.
- (c) **“Transfer Date”** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice, in accordance with the terms of the Concession Agreement.
- (ci) **“Users”** means the Vehicles and Persons/ individuals using the Complex.
- (cii) **“User Charges”** means collectively the Parking Fees, Service Charges, License Fee, Commercial Area Charges or any other sources of revenues or amounts of money by whatever name called that are levied, demanded, collected, retained and appropriated by the Concessionaire from Users including revenue earned under sub-license or subcontracting arrangements or under any other arrangement from or in respect of the Project.
- (ciii) **“Value Added Services”** means the services like locker facility, valet parking etc. related to the Car Parking component of the Project, which may be provided optionally by the Concessionaire.
- (civ) **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc to be carried out by the Concessionaire, such that the cost of implementing the modification, improvement or change can be recovered through a 30-day adjustment of the Concession Period.



- (cv) **“Vehicles”** means the vehicles as specified in **Schedule IV** which are allowed to use the Car Parking facility.
- (cvi) **“Vesting Certificate”** means the certificate issued under Article 33.4, after the termination of this Concession Agreement.
- (cvii) **“Works”** means the design, construction, upgradation, completion, testing and commissioning, operation and maintenance and rectifying or/ and remedying of defects of the buildings, services, facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.

1.2 Principles of Interpretation

In this Concession Agreement, unless the context otherwise requires:

- (i) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (ii) Reference to laws of Government of Himachal Pradesh, laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Himachal Pradesh;
- (iii) The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- (iv) Terms and words beginning with capital letters and defined in this Agreement including the Schedules;
- (v) Words importing Person or Parties shall include firms and corporations and any organisation having legal capacity to sue and be sued in its name.
- (vi) Words importing the singular shall include the plural and vice-versa where the Concession requires.
- (vii) Any reference to day shall mean a reference to a calendar day;
- (viii) Any reference to month shall mean a reference to a calendar month;
- (ix) The Schedules of 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;
- (x) 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;
- (xi) References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;



- (xii) Any Agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorised representative of such party, as the case may be, in this behalf and not otherwise;
- (xiii) 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 next business day;
- (xiv) 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

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done in 2 decimals places, with the third digit of 5 or above rounded up and below 5 belong down except in Fee calculation which shall be rounded off to nearest Rupee Hundred (100).

1.4 Ambiguities within Agreement

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

- (i) Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;
- (ii) Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;
- (iii) Between the written description on the Drawings and the Technical Requirements & Performance Standards, the latter shall prevail;
- (iv) Between the written description on the Drawing and the specific written dimension, the latter shall prevail; and
- (v) Between any value written in numerals and that in words, the later shall prevail.

1.5 Priority of Documents

The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows:

- (i) This Concession Agreement
- (ii) The Schedules of this Concession Agreement
- (iii) The “Notice of Award”



- (iv) The Annexures of this Concession Agreement
- (v) The written clarifications issued to the bidders
- (vi) Written addenda to the RFP Document, issued subsequently
- (vii) The RFP Document.

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ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The Scope of the Project shall mean and include the following during the Concession Period:

- (i) Planning and designing of a conventional ramp based Car Parking component to be constructed at the Project Site and thereafter, get it approved from the Design Approval Committee, as per the laid down provisions of the Concession Agreement and Schedules hereof.
- (ii) Construction of Car Parking component on the Project Site, conforming to Applicable Laws & Applicable Permits including building bye-laws and regulations and provisions of this Concession Agreement.
- (iii) Option to develop Value Added Services related to the Car Parking component of the Project and levy, demand and collect Service Charges from the Users.
- (iv) To develop a Commercial Area (*restricted to FAR approved by GoHP/ TCP/ Authority which currently is 1.5*) at the Project Site, wherein the developments as laid down in **Schedule-I** shall be permitted.
- (v) Operation and Maintenance of the Project Facility/ Complex in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- (vi) Demand, levy, collect, enforce, retain and appropriate Parking Fees, from all the Users using the Car Parking at rates determined herein.
- (vii) Determine, demand, levy, collect, enforce, retain and appropriate User Charges including Service Charges, Commercial Area Charges etc. from the sub-licensees/ Users as per the laid down provisions of the Concession Agreement and the Schedules hereof.
- (viii) To make payment of all applicable existing and future taxes, charges, fees, levies etc. as may be applicable to the Project and/ or any activities in pursuance of the draft Concession Agreement during the Concession Period.
- (ix) Performance and fulfillment of all other obligations of the Concessionaire 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 Concessionaire under this Agreement.

The detailed Scope of Work is specified in Schedule III. In addition to the above-stated Scope of Work, the Concessionaire shall adhere to all the terms & conditions set forth in this Concession Agreement and the Schedules hereof.



ARTICLE 3: CONCESSION

3.1 Grant of Concession

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of **30 years (Thirty) years**, commencing from the Compliance Date, including the exclusive right, license and authority during the subsistence of this Agreement, including extension thereof, to plan, design, finance, engineer, construct, develop, equip, operate, maintain and manage the Project and enjoy its commercial benefits for the Concession Period and the Concessionaire 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 terms and conditions set forth in this Agreement, the Concessionaire undertakes the following in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits :
- (i) To have Right of Way, access and licence to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (ii) To develop, finance and implement the Project;
 - (iii) manage, operate and maintain the Project and regulate the use thereof by third parties;
 - (iv) To enjoy complete and uninterrupted access and license to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement and for a period that shall be co-terminus with the Concession Agreement;
 - (v) To have access and liberty to plan, design, construct, finance, maintain and operate the Project Facility during the Concession Period in accordance with the provisions of this Concession Agreement & Schedules thereof. Any construction or development made by the Concessionaire on the Project Site in respect of the Complex shall be deemed to be the property of the Authority and the Concessionaire relinquishes all his rights in such property in favour of Authority upon Termination;
 - (vi) To have exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Project Facility;
 - (vii) To demand, levy, collect, enforce, retain and appropriate Parking Fees from all the Users using the Car Parking component of the Complex, at the rates mentioned in **Schedule VIII**;
 - (viii) To Sub-License the use of the Project to sub-licensees and thereupon, determine, demand, levy, collect, enforce, retain and appropriate Service Charges and Commercial Area Charges and to periodically revise the same in conformity with the market rates. Within the limitations of statutory provisions and decency of operations, the Concessionaire shall make all the efforts to maximise the earnings from the Value Added Services and associated operations and to keep the Authority informed of actions taken and results thereof;



- (ix) To regulate the use of the Complex by the Third Parties/ sub-licensees and enforce the collection of Parking Fees, Service Charges, Commercial Area charges etc. from delinquent Users, as per the Applicable Laws;
- (x) To manage, operate and execute rights over all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Concession Agreement;
- (xi) To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
- (xii) To arrange for all the Applicable Permits from the Competent Authorities for the development of the Complex and the Authority is no way liable for the same. Nevertheless the Authority without any binding obligation may provide any assistance upon written request from the Concessionaire.
- (xiii) To exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for developing, financing, implementing, managing, operating, running & maintaining the Project.
- (xiv) Bear and pay all expenses, costs, taxes, duties, levies and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement; and

Nothing contained herein, including the act of granting permission to develop the Project at the designated area shall vest or create any proprietary interest in the Project or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Parking-cum-Commercial Complex in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2 Actions in Support of the Concession

- 3.2.1 The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- 3.2.2 The Authority/ any other Competent Authority hereby undertakes and agrees not to (i) impose any levy, charge or tax in future on the use of the Car Parking component of the Project or (ii) close down or otherwise cause any diversion of Vehicles on the approach roads to/ entering and leaving the Car Parking in a manner that has an adverse effect on their entry or exit thereto or there from, save and except during emergencies, law and disorder problems or for purposes of public safety, in which case, the diversion shall not be longer than the requisite period for or pursuant to such eventualities.
- 3.2.3 For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Senior Lenders its rights and interests under or pursuant to this Agreement, including, without limitation, its rights in and to (i) the Project Agreements and (ii) the cash flows generated by the collection of Parking Fees from



Vehicles, Services Charges, Commercial Area Charges, etc. and to create a security in such rights and interests in favour of the Lenders. However, it is also clarified that the Concessionaire shall not be entitled to mortgage any immovable asset, which is a part of the Project Assets and the Project Site.

- 3.2.4 The Authority hereby undertakes not to exempt or otherwise exercise its rights, powers and authority so as to cause the Concessionaire to exempt any specified class or classes of Vehicles from payment of Parking Fees.
- 3.2.5 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.
- 3.2.6 The Authority shall provide assistance and recommendations to the Competent Authorities, including GoHP, in support of the Concessionaire's applications for Applicable Permits that may be needed from time to time for the implementation of the Project; *provided* that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such Applicable Permits.

3.3 Concession Period

- 3.3.1 The Concession Period for **“the Project”** shall commence from the Compliance Date and shall extend for a period of **30 (Thirty)** years from such date (the **“Concession Period”**) during which the Concessionaire is authorized to implement the Project and to operate the Project Facility/ Complex in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.
- 3.3.2 At the end of the Concession Period by way of efflux of time, the Authority would either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters as per its sole discretion. In the event of re-bidding, if the Concessionaire chooses to participate in the re-bidding process and does not emerge as the successful bidder by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required, then the Concessionaire shall be provided with the right of first refusal to match the bid of the H1/ L1 bidder (this right to be given only subject to the condition that the Concessionaire is/ was not in default in respect of its obligations under the Agreement and its performance is considered satisfactory by the Authority) and to enter into fresh agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Authority at its sole discretion.
- 3.3.3 It is hereby made clear that:
- (i) In the event of the Concession Period being extended by 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 on an earlier date, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.



- 3.3.4 At the end of the Concession Period or sooner termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site, Project Facility/ Complex with all the furniture and fixtures and other assets permanently attached to the Complex shall revert to the Authority without any Encumbrances and obligation to Authority to pay or adjust any consideration or other payment to the Concessionaire.

3.4 Construction Period

- 3.4.1 The Concessionaire shall be required to complete the construction of the following components within a period of **24 (twenty four) months** starting from the Compliance Date (the “**Scheduled Date of Construction Completion**”):

- (i) Complete the Car Parking component comprising of 500 number equivalent car parking spaces for public use and additional 100 car parking spaces for the Users of the Commercial Areas, in entirety at the Project Site and make it fully operational in all respects pursuant to obtaining of Completion Certificate in terms hereof;
- (ii) Complete the structural framework and exteriors/ façade of the Commercial Area. However, the Concessionaire can plan to make the Commercial Area operational in all respects by Scheduled Date of Construction Completion at its sole discretion in accordance with the Project Implementation Schedule;
- (iii) Obtain all the necessary applications at its cost and procure all necessary/ mandatory Applicable Permits/ permissions including environmental Applicable Permits that are required for commencing the construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect.
- (iv) Hand over to the Authority 400 sq. ft. of built-up space within the Commercial Complex free of cost,

- 3.4.2 The Parties understand that the Concessionaire shall have the option to develop the Commercial Complex and sub-license the same at its own discretion. It is to be agreed that the Concessionaire shall complete the structural framework and exterior façade of Commercial Complex within a specified period and shall have the option for completion of whole of the interiors, internal furnishing and internal services as per requirement and as stipulated under this Agreement.

3.5 Sub-Licensing of built up areas at the Commercial Area

- 3.5.1. The Concessionaire shall have the right to sub-license built up space for setting up of shops, hyper-marts, offices, etc. within the Project Facility pursuant to COD. Provided however, it shall be obligatory upon the Concessionaire to first operationalize the Car Parking component before allowing occupation of the spaces/ areas at the Commercial Area and operationalizing the same. The Concessionaire shall enter into appropriate sub-license deeds and contractual arrangement with such sub-licensees/ third parties. Each such sub-license deed shall, incorporate clauses, that (i) the sub-license deeds shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre-mature, as the case may be); in no event the term of such sub-license(s) shall extend beyond the Agreement Period. The Project Facility shall be handed back to the



Authority free of such sub-licensees; and (ii) the terms of such sub-license(s) shall not be contrary to or in derogation of the terms of this Agreement.

- 3.5.2. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate the aforesaid covenant of termination of the sub-licensees rights and further that the sub-licensee shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-license deed/ agreement which the Concessionaire will be required to sign with the sub-licensee for the use of the Complex. The Concessionaire shall furnish the draft of such agreement/ arrangement to Authority for modification or suggestion. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest. The Concessionaire shall enter into sub-license arrangements as per the standard format with the covenants stipulated by the Authority and the Concessionaire shall not incorporate or change any clause in the arrangement/agreement that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above mentioned standard draft of the agreement in any particular circumstances, which supersedes or adversely effects Authority's terms and covenants, the prior written consent of the Authority shall be taken before entering into any such agreement with sub-licensees. The Concessionaire shall submit the copy of the executed and signed sub-license deed(s) to the Authority for its records. The sub-licensee/s shall pay the license fees etc. under the sub-license deeds directly into the Escrow Account.
- 3.5.3 Provided however, at no point of time, the Concessionaire will enter into any licence with any third party(ies) in which they give any such right to Sub-Licensee or to any third party which may adversely affect the interests of the Authority and/ or is not available to the Concessionaire at the very first place.
- 3.5.4 The Concessionaire shall maintain Sub-License Register, in such format as may be acceptable to the Authority. Details of all the sub-license deeds shall be entered into the Sub-License Register within 30 (thirty) days of entering into the Sub-License Deed and copy of such Sub-License Deed shall be supplied to the Authority (the "**Sub-License Register**"). The Concessionaire shall provide copy of the Sub-License Register to the Authority every year before the 15th of April. Further, upon the receipt of written request from the Authority, the Concessionaire shall allow the representative of the Authority to conduct due diligence of all the Sub-License Deeds entered into by the Concessionaire with respect to the Project and shall, upon demand, supply the relevant extracts of the Sub-License Register to the representative of the Authority.



ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary, limited aspects of the Construction Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of **180 (one hundred eighty) days** from the Effective Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire.

4.1 Conditions Precedent for Authority

The Authority shall have:

- (i) Provided the land comprising the Project Site to the Concessionaire alongwith the right of way, leave and license rights in respect of the same, clear and free from all Encumbrances including removal of existing buildings and trees from the Project Site and with a right to sub-license;
- (ii) Notified the Parking Fee to be levied for use of the Car Parking component by the Users, which shall be effective from the Commercial Operations Date;
- (iii) Notified that no Vehicles shall be parked on-street and the surrounding areas/ roads to the Project Site after the Commercial Operations Date of the Project;
- (iv) Constituted a Design Approval Committee, the constitution and function of which is specified in **Schedule VII**, for the approval of the design of the Project, to be developed by the Concessionaire;
- (v) Approved the Project Implementation Schedule and the design of the Project Facility, as approved by the Design Approval Committee and also, give comments on the design submitted by the Concessionaire, within a time period of 15 (fifteen) days from the date of submission of design by the Concessionaire;
- (vi) Appointed the Independent Engineer in accordance with the terms hereof;
- (vii) Issued any Notification as regard to any Local Bye Laws required for development and implementation of the Project.

4.2 Conditions Precedent for Concessionaire

The Concessionaire shall have:

- (i) Submitted a detailed design including the architectural plans, elevation section, traffic circulation plan of the Complex as per Applicable Laws including applicable Local Building Bye laws, Developments Envisaged (**Schedule-I**) Scope of Work, Technical Requirements and Performance Standards (**Schedule-III**), to the Authority for its approval from the Design Approval Committee, within a time period of 60 (sixty) days from the Effective Date;
- (ii) Incorporated the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Design Approval Committee. However, it is clarified here that the Concessionaire shall not start the construction until and unless (a) the Design



Approval Committee/ Authority approves the detailed design of the Complex, which shall not be unduly delayed by the Design Approval Committee/ Authority and (b) the Concessionaire has obtained approval for the design/ drawings/ plans of the Project Facility (as approved by the Design Approval Committee) from the Competent Authority/ies/ the Municipal Corporation, Mandi;

- (iii) Submitted structural geometry, location, types of vehicles parking proposed to be provided, parking procedures, quality certification etc, entry & exit area plan and design, building and underground civil work, details of electrical and electronic system for the Complex, power backup fire safety measures, traffic management, energy consumption, installed load, time of retrieval (minimum/ maximum), quality assurance program, EMP, occupational safety and health, conservation of energy, pollution control, protection of environment, ease of maintenance, facility of retrieval in case of partial failure, standby power arrangement and expected lifecycle of the system and the structure evacuation plans. It is stipulated that while preparing all the plans, design and layouts, the Concessionaire shall comply with the Applicable Laws, Applicable Permits, Developments Envisaged Schedule, Scope of Work, Technical Requirements and Performance Standards specified in **Schedule III**;
- (iv) Submitted Project Implementation Schedule to the Authority as specified in Article 8.7.1 along with a preliminary cost estimate of the Project to the Authority for its perusal;
- (v) Executed and procured execution of the Escrow Agreement;
- (vi) Executed and procured execution of the Substitution Agreement;
- (vii) Procured all the Applicable Permits required for commencing construction of the Project;
- (viii) Delivered to the Authority (selected bidder/ Consortium Members) confirmation of the correctness of the Representations and Warranties of the Concessionaire set forth in Article 17 of this Agreement;
- (ix) Executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (x) Delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which are workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the senior Lenders;
- (xi) Received from the Indian Legal Counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.2.

4.3 Obligations to satisfy Condition Precedents



- 4.3.1 Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 180 (one hundred eighty) days of the Effective Date and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.3.2 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.3.3 Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”) in the format prescribed in **Schedule XI**.
- 4.3.4 The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the **Compliance Date**, whereupon the obligations of the Parties under this Concession shall commence and whereon the Authority shall issue the Notice to Commence to the Concessionaire.
- 4.3.5 Each party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Damages for delay by the Authority

- 4.4.1 In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1 within the period specified in respect thereof or within such extended time period as mutually agreed between the Parties and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1 % (zero point one per cent) of the Construction Period Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten per cent) of the Construction Period Performance Security. Provided that the Concessionaire hereby agrees and acknowledges that in no event whatsoever the Authority will be required to pay any Damages to the Concessionaire in the event of delay in the concerned authority or government agency/ department issuing any Applicable Permits.
- 4.4.2 In the event, maximum Damages as specified in Article 4.4.1 above have been reached and the Authority still fails to achieve fulfilment of any or all of the Conditions Precedent set forth in Article 4.1, it would entitle the Concessionaire to terminate this Agreement as per provisions hereof. In such an event, the Authority shall forthwith release the Construction Period Performance Security, subject to any outstanding dues of the Concessionaire hereunder.

4.5 Damages for delay by the Concessionaire

- 4.5.1 In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.2 within the period specified in respect thereof or within such extended time period as mutually agreed between the Parties, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.1 or other breach of this Agreement by the Authority or due to Force Majeure or fulfillment of such Conditions Precedent has not been waived off by mutual agreement of the Parties hereto, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of



0.2% (zero point two percent) of the Construction Period Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Construction Period Performance Security and upon reaching such maximum, the Authority may in its sole discretion, terminate the Agreement.

4.5.2 Upon termination of the Concession Agreement in terms of Article 4.5.1 above, all rights, claims and entitlements of the Concessionaire under or arising out of this Agreement shall cease and the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees; further the Authority shall forfeit the Construction Performance Security of the Concessionaire as Damages.

4.5.3 In the event that the encumbrance free Project Site has been handed over to the Concessionaire prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

4.6 Extension of period for fulfilment of Conditions Precedent

The parties instead of levying Damages and/ or terminating the Agreement under this Article 4 may mutually agree to extend the time period mentioned hereinabove for the fulfilment of Conditions Precedent with such conditions as deemed fit.



ARTICLE 5: PERFORMANCE SECURITY AND PAYMENTS TO AUTHORITY

In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Authority, the following:

5.1 Upfront Premium

5.1.1 The Concessionaire shall pay an amount of Rs.2 Crores (Rupees Two Crores Only) to the Authority by way of 5 equal instalments of Rs.40 Lakhs each over a period of **24 (twenty four)** months starting from the Compliance Date (the “**Upfront Premium**”).

5.1.2 The Upfront Premium shall be paid by the Concessionaire in the following 5 instalments:

- Rs. 40,00,000/- (Rupees Forty Lakhs only) within 7 (seven) days of Compliance Date;
- Rs. 40,00,000/- (Rupees Forty Lakhs only) within 7 (seven) days of completion of 6 months from the Compliance Date.
- Rs. 40,00,000/- (Rupees Forty Lakhs only) within 7 (seven) days of completion of 12 months from the Compliance Date.
- Rs. 40,00,000/- (Rupees Forty Lakhs only) within 7 (seven) days of completion of 18 months from the Compliance Date.
- Rs. 40,00,000/- (Rupees Forty Lakhs only) within 7 (seven) days of completion of 24 months from the Compliance Date.

5.1.3 In the event of delay in making the payment, the Concessionaire shall be required to pay the Authority interest at the rate of SBI Marginal Cost of funds based Lending Rate (MCLR) plus 4% per annum. In the case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.

5.1.4 The payment of Upfront Premium shall be made into the Authority’s Designated Bank Account by way of online transfer of funds from the Escrow Account. 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 receipt of Upfront Premium shall have to be paid by the Concessionaire along with and in addition to such payment.

5.2 Annual Concession Fee

5.2.1 The Concessionaire shall pay to the Authority an Annual Concession Fee with effect from the Commercial Operations Date or an earlier date when Completion Certificate or Provisional Certificate, as the case may be, is issued by the Independent Engineer/ Authority in terms of this Concession Agreement whether in respect of the entire Project Facility or only in respect of the Car Parking component of the Project.

5.2.2 The Annual Concession Fee applicable for the first year is **Rs. _____/- (Rupees _____ crores only)**³. The Annual Concession Fee shall escalate at the rate of 5% (five percent) over the previous value (of applicable Concession Fee) at the end of

³ This amount shall be filled up with the figure mentioned in the Notice of Award.



each block of 12 months reckoned from COD. The Annual Concession Fee shall be payable in advance to the Authority.

- 5.2.3 The Concessionaire shall regularly make payments of Annual Concession Fee to the Authority by way of bi-annual instalments of equal amount, to be paid from the Escrow Account no later than 7 (seven) days from the commencement of each block of six months. The first instalment of Annual Concession Fee shall be made on the COD and thereafter the next instalment of Annual Concession Fee applicable for that year shall be paid at the end of 6 (six) months from COD i.e. within 7 (seven) days from the commencement of next block of six months. Thereafter, the Annual Concession Fee shall be paid to the Authority within a period of 7 (seven) days from the commencement of each block of six months.
- 5.2.4 The Concessionaire agrees that the Annual Concession Fee at the applicable rate in terms of this Article 5.2, shall be payable by the Concessionaire irrespective of the fact that only the Car Parking component of the Project Facility is made operational pursuant to issuance of Completion Certificate in terms of this Agreement and the Commercial Area is only partly constructed or not constructed by the Concessionaire.
- 5.2.5 The payment of Annual Concession Fee shall be made into the Authority's Designated Bank Account by way of online transfer of funds from the Escrow Account. 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 receipt of the Annual Concession Fee shall have to be paid by the Concessionaire 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 Concessionaire, whether payable by the Authority or the Concessionaire
- 5.2.6 In the event of delay up to four weeks in payment by the Concessionaire, the Concessionaire shall be required to pay the Authority interest at the rate of SBI Marginal Cost of funds based Lending Rate (MCLR) plus 4% per annum. In the case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.
- 5.2.7 It is clarified that the amount of Annual Concession Fee mentioned in Clause 5.2.2 including the applicable amount of Annual Concession Fee pursuant to annual escalation is in respect of the maximum built up area available to the Concessionaire as per the current FAR of 1.5 allowed as per Applicable Law by the GoHP/ Authority. In the event, at any time in the future, if the aforesaid FAR norm is relaxed by the GoHP/ Authority and in pursuance to the same, the Concessionaire constructs additional floors or develop additional built-up spaces at the Project Site, the applicable amount of Annual Concession Fee at that point of time shall be liable to be enhanced proportionately to the increase in the FAR and the Concessionaire shall be obligated to pay the Annual Concession Fee to the Authority at such proportionately increased rate which will thereafter be subject to annual escalation at the rate of 5% for the balance Concession Period.

5.3 Performance Security

- 5.3.1 The Concessionaire for the due and faithful performance of its Conditions Precedent and obligations under the Concession Agreement has provided to the Authority, Performance Security for the value specified in **Schedule-VI** prior to the signing of this Agreement by way of unconditional and irrevocable Bank Guarantee from any scheduled Bank in India as per the format specified in **Schedule-V(A)** in favour of "The Commissioner, Municipal Corporation Mandi" (the "**Construction Period Performance Security**"). The validity of the Performance Security as specified herein shall be maintained at all times till the end of



the 1st (first) anniversary of the COD by the Concessionaire by way of periodic renewals.

- 5.3.2 Atleast 1 (one) month prior to the end of 1st (first) anniversary of the COD, the Concessionaire shall replace the Construction Period Performance Security Bank Guarantee with the fresh Bank Guarantee for the reduced value specified in **Schedule-VI** from a scheduled Bank in India as per the format specified in **Schedule-V(B)** in favour of “The Commissioner, Municipal Corporation Mandi” which shall remain valid and in force for the entire duration of the O&M Period (the “**O&M Period Performance Security**”). Till the time, the Concessionaire replaces the Construction Period Bank Guarantee (of the higher amount) with the O&M Period Bank Guarantee of the reduced amount, the Bank Guarantee of the higher amount shall be kept valid and subsisting. The amount of O&M Period Performance Security shall increase at the rate of 5% annually in line with the applicable rate of Annual Concession Fee in terms of Article 5.2. Accordingly, the Concessionaire shall ensure that the O&M Period Performance Security is of the applicable amount every year.
- 5.3.3 The Concessionaire shall keep and maintain the Performance Security Bank Guarantee valid and in full force and effect at all times during the term of this Agreement (through periodic renewals, if any required, at least one month prior to the expiry of the subsisting Performance Security Bank Guarantee. In the event the Concessionaire fails to provide the renewed/ extended Performance Security at least one month prior to the expiry of the subsisting bank guarantee, 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 Bank Guarantee. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute a Concessionaire Event of Default in terms hereof.
- 5.3.4 Upon Concessionaire’s failure to meet any obligation or upon occurrence of Concessionaire Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.
- 5.3.5 In the event of any delay/ default in payment of amounts due and payable to the Authority including payment of any Damages in terms of this Agreement by the Concessionaire, the Authority reserves the right to recover the same by having recourse to Concessionaire’s Performance Security through partial or full amount appropriation and upon such occurrence, the Concessionaire shall replenish/ provide fresh Performance Security so as to be in compliance with the provisions of this Article 5.3.

5.4 Adjustment of the Annual Concession Fee

- 5.4.1 The Annual Concession Fee shall not be adjusted for changes in the cost of labour, materials or other matters. The Annual Concession Fee/ Concession Period shall only be adjusted as expressly and explicitly stated in the Articles to this Concession Agreement, and there shall be no other implied adjustments for any other reasons whatsoever.



- 5.4.2 Any reference to payment or cost payable by the Authority to the Concessionaire under this Concession Agreement, except with respect to Termination Payments, shall be treated as a reference to adjustment of the Annual Concession Fee only.

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ARTICLE 6: HANDOVER AND USE OF PROJECT SITE

6.1 Entry to the Project Site for Work

- 6.1.1 In consideration of the Concession Fee, this Agreement and the covenants & warranties on part of the Concessionaire herein contained, the Authority in accordance with the terms and conditions set forth herein, hereby grants onto the Concessionaire, commencing from the Compliance Date, leave and license rights in respect of all the land (after demolishing any existing buildings and removal of trees, if any, thereon) comprising the Site which is described, delineated and shown in Schedule II (the “**Licensed Premises**”), clear and Encumbrance free, to develop, operate and maintain the Project on or above the said Licensed Premises, together with all rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or 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.
- 6.1.2 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to the existing rights of way.
- 6.1.3 The Authority shall provide to the Concessionaire clear and unhindered access to the Project Site, free of all Encumbrances earmarked for the Multi-Storey Parking-cum-Commercial Complex/ Project, for undertaking the work relating to the Project immediately after the fulfillment of all Conditions Precedent. However, the Concessionaire shall be permitted to enter the Project Site for the purpose of surveys, site and geotechnical investigations as required for planning and designing of the Project.
- 6.1.4 It is expressly agreed that the License granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 6.1.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted pursuant to this Agreement at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it.
- 6.1.6 The Concessionaire is required to separately and independently perform due diligence, checks and verification of the site and the Authority is in no way responsible for the same.

6.2 Use of the Project Site and Peaceful Possession

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



- 6.2.2 The Concessionaire shall confine its operations to the Project Site by appropriately covering the areas of operations so as to not cause any nuisance or inconvenience to public. The Concessionaire 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/ public/ private areas or work being carried thereat. Concessionaire has to specifically take note of the fact that utmost care will be required to be taken to ensure safety and un-interrupted movement of commuters at all times and 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.
- 6.2.3 The Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the premises granted to the Concessionaire.
- 6.2.4 The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement.

6.3 Protection of Site from encroachments

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

6.4 Special/ Temporary Right of Way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

6.5 Right of Access to the Authority, Independent Engineer and Monitoring Committee

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, the Independent Engineer, Monitoring Committee and any governmental authority and their employees and agents (authorized) for inspection, viewing and exercise of their right and performance of their obligation under this Agreement.

6.6 Geological and archaeological finds

It is expressly agreed that mining, geological and archaeological rights do not form part of the long term license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belongs to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workers or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall



procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

6.7 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws, with due approval of the entity owning the utility and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Project Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project or Project Facilities. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

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ARTICLE 7: OBLIGATIONS 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 Concessionaire 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:
- (i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (ii) upon written request from the Concessionaire, assist the Concessionaire (on best effort basis without any binding obligation) in obtaining access to all necessary infrastructure facilities and utilities as may be required for the Project at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (iii) not do or omit to do any act, deed or thing which may in any manner be violation of any of the provisions of this Agreement;
 - (iv) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (v) not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the construction, operation and maintenance of the Complex except as may be provided in this Concession Agreement;
 - (vi) all litigation involving the Project Site, prior to the date of issue of Notice to Commence and wherein the actions have been filed against the Authority, the same shall be contested and conducted solely by the Authority. The Concessionaire shall be in no way held responsible or liable as a reason thereof. The Authority shall indemnify the Concessionaire and shall hold it free of any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding Project Site.
 - (vii) any liability arising out of in providing the Project Site free of Encumbrances shall be borne solely by the Authority. The Authority shall indemnify the Concessionaire and shall hold it harmless from any claim or consequential cost that may arise as a result of any such transfer of the Project Site.
- 7.1.3 If the Concessionaire suffers delay or incurs Cost as a direct result of failure on the part of the Authority to perform its obligation under this Agreement, the Concessionaire shall give notice of the same to the Authority. Upon receipt of such notice the Authority shall proceed to take remedial measures and make compensatory adjustments in the Concession Period in accordance with Articles 7.2 and 11.3.
- 7.1.4 The Authority accepts the Concessionaire's right to advertise and set up and display hoardings, billboards and other information panels at the Project Site/ Complex or to grant license to such



rights against payments, provided that such rights shall be exercised in accordance with the Applicable Laws and orders, decrees, direction of courts and regulations of Municipal Corporation, Mandi;

7.2 Authority's Determination

- 7.2.1 When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Concession Period/ Annual Concession Fee, it shall consult with the Concessionaire and the Independent Engineer (if appointed) in an endeavour to reach agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the Concession Period/ Annual Concession Fee. The Authority's determination on value, cost and adjustment of the Concession Period/ Annual Concession Fee shall be intimated to the Concessionaire within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- 7.2.2 If the Concessionaire disputes Authority's determination of value, cost or adjustment to the Concession Period/ Annual Concession Fee, the matter shall be referred to the Independent Engineer in accordance with the following provisions:
- (i) If the Concessionaire disagrees with the value, cost or adjustment determined by Authority it shall give notice in writing of its intention to Authority, as soon as may be reasonable and in any event within 7 (seven) days after receipt of notice of the value, cost or adjustment and thereafter within a further period of 7 (seven) days to notify the Independent Engineer of such dispute.
 - (ii) The Independent Engineer upon receipt of a notice under this Article shall require Authority to furnish to the Independent Engineer all the reasons, records and documents based upon which Authority had determined the value, cost or adjustment.
 - (iii) The Concessionaire shall permit the Independent Engineer to inspect all records and shall supply him with copies thereof and with all such further information as and when the Independent Engineer shall so require.
- 7.2.3 In the event of a dispute arising in the period beyond the tenure of the Independent Engineer under Article 28, the duties of the Independent Engineer (in respect of operation of this Article) shall be carried out by an Expert appointed by the Maintenance Board.
- 7.2.4 Excepting Termination Payments or else as expressly provided for in this Concession Agreement, any payments to the Concessionaire by the Authority shall be made only through the mechanism of adjustment to the Annual Concession Fee/ Concession Period.



ARTICLE 8: OBLIGATIONS OF THE CONCESSIONAIRE

8.1 Obligations of the Concessionaire

- 8.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expense undertake the designing, engineering, procurement, construction, operation and maintenance of the Project and Project Facilities and fulfill and perform all its obligations set out in this Agreement or arising hereunder.
- 8.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 8.1.3 Subject to the provisions of Articles 8.1.1 and 8.1.2 above, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent contractor/ developer.
- 8.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (i) take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the provisions of Article 4.1 and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Concession Agreement;
 - (ii) pay to HPIDB, the second instalment of the Project Development Fee i.e. Rs.25 Lakhs plus the applicable taxes including GST;
 - (iii) make, or cause to be made, necessary applications to the relevant Government authorities with such particulars and details, as may be required for obtaining all Applicable Permits for carrying out developments at the Project Site as specified in this Agreement necessary approvals, clearances and sanctions from the Competent Authority, for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire-fighting, telecommunications etc., and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (iv) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Facility;
 - (v) perform and fulfill its obligations under the Financing Agreements;
 - (vi) comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Contractors;
 - (vii) submit, 4 (four) copies each (soft/ hard) of the detailed design, including Architectural Plans, Structural Drawings, elevations sections, all internal and estate services of the Project to the Authority and also, incorporate the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority. However, it is clarified here that the Concessionaire shall not start the construction until and unless (a) the Authority, approves the detailed design of the Project Facility again after carrying out necessary



amendments, which shall not be unduly delayed; and (b) the Concessionaire has obtained approval for the design/ drawings/ plans of the Project Facility (as approved by the Design Approval Committee) from the Competent Authority/ies/ the Municipal Corporation, Mandi;

- (viii) make arrangements and procurement of firm commitment for financing the Project and achieve Financial Closure and deliver complete evidence to the Authority that Financial Closure has been accomplished, within a period of 180 days from the date of signing of this Concession Agreement;
- (ix) carry out the Works strictly in accordance with the provisions of this Concession Agreement, approved design and plans, work program, quality controls, Developments Envisaged (Schedule-I), Scope of Work, Technical Requirements and Performance Standards (Schedule-III) and the Project Implementation Schedule, and carry out all such works not expressly mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient construction and operation of the Works;
- (x) undertake to complete the construction within the specified Construction Period, provided that the Concessionaire shall not be in breach of this sub-clause (x) if any non-fulfilment or the delay in fulfilment of its obligation are caused by (a) the occurrence of an event of Force Majeure or (b) a Authority Event of Default or any other act or omission of the Authority in contravention of its obligations under this Concession;
- (xi) to furnish the Authority with the “As Built Drawings” of the Project within 30 (thirty) days of the completion of the Construction of the Project;
- (xii) ensure not less than 500 number equivalent car parking spaces are assured for public parking space and additional 100 car parking spaces are reserved for Commercial Complex in the Multi-Storey Parking-cum Commercial Complex (with each car space measuring at least 28 square metres);
- (xiii) ensure to open 500 equivalent car parking spaces to public use before beginning operation of the Commercial Area/ Complex;
- (xiv) ensure that the Commercial Area in addition to the Car Parking component has been constructed at the Project Site as per conceptual design and plans approved by the Authority;
- (xv) hand over 400 sq. ft. built-up space within the Commercial Complex to the Authority free of cost during the Construction Period;
- (xvi) ensure that the Parking Fees for Vehicles is in accordance with the rates as mentioned in **Schedule VIII**;
- (xvii) ensure that the Parking component of the Complex shall be used for the parking of Vehicles specified in **Schedule IV**. No other vehicles or transport device including three wheeler auto-rickshaw, rickshaw, bicycles, tricycles, rehras shall be parked at the Parking component of the Complex;
- (xviii) shall have the right to sub-license the use of Parking-cum-Commercial Complex, during the subsistence of this Concession Agreement only with a clear stipulation that sub-



licenses granted shall terminate simultaneously with the termination of this Concession Agreement including on sooner determination of the Concession Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate this covenant of termination of the sub-licensees rights and further that the sub-licensee shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sub-license deed/ agreement which the Concessionaire will be required to sign with the sub-licensee for the use of the Complex. The Concessionaire shall furnish the draft of such agreement/ arrangement to Authority for modification or suggestion. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest. The Concessionaire shall enter into sub-license arrangements as per the standard format with the covenants stipulated by the Authority and the Concessionaire shall not incorporate or change any clause in the arrangement/ agreement that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above mentioned standard draft of the agreement in any particular circumstances, which supersedes or adversely effects Authority's terms and covenants, the prior written consent of the Authority shall be taken before entering into any such agreement with sub-licensees;

- (xix) shall ensure that the use of the Project Site is restricted to the Article 2 (Scope of Work), Envisaged Development (**Schedule-I**);
- (xx) shall ensure that there is smooth entry and exit of the Vehicles in/ from the Parking area of the Complex and no disorder/ chaos is caused to the Vehicles or traffic plying on the Road and pedestrians;
- (xxi) shall ensure to specifically put, at every entry and/ or exit of the Parking area, an Intelligent Transport System wherein the Parking Fees, as applicable to various categories of Vehicles have been clearly laid down and install electronic parking fee collecting machines;
- (xxii) shall ensure that the car space/s vacant in the Parking area is being made available to the Users on first-come-first serve, on daily basis. Moreover, the Concessionaire shall not be allowed to reserve any single or more car space/s for third party/ Person, for more than 7 (seven) days. However, the Concessionaire may at its discretion restrain the general public from using the additional 100 car parking spaces reserved for the Commercial Area Users;
- (xxiii) carry out its obligations and duties with regard to the operation and maintenance of the Project in accordance with the provision of this Agreement and Schedules hereof. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation (including fee collection) and maintenance (including remedying of defects);
- (xxiv) take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the Project, irrespective of any approval or consent by Authority;



- (xxv) submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution;
- (xxvi) to be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance with the local building byelaws;
- (xxvii) to ensure that no structural damages is caused to the existing buildings and other permanent structures in the immediate vicinity or at the Project Site as a result of Concessionaire's activities or any of its agents, contractors, tenants etc.;
- (xxviii) submit "Structural Safety Certificate" of the proposed Complex from competent structural engineer before the commencement of commercial activities. The Concessionaire shall ensure that the certificate is also counter certified/ signed by the Independent Engineer;
- (xxix) to submit to the Independent Engineer a copy of all the statutory approvals (in the form of completion certificate and/ or occupation certificate and/ or no objection certificate, etc.) required by the Concessionaire under Applicable Laws from Competent Authority/ies in respect of the Construction Works completed at the Project Site and for subsequent operationalizing of the Project Facility;
- (xxx) to pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, GST, stamp duty, registration charges and any other legal documentation charges, if any, in respect of the said Complex, including Project Site, as leviable;
- (xxxi) to duly supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary and to ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (xxxii) to ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (xxxiii) to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (xxxiv) to take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
- (xxxv) not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest over all or any part of Project Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;



- (xxxvi) to ensure that such Project Site remains free from all encumbrances, encroachments and trespass during the entire Concession Period;
- (xxxvii) to provide all assistance to the Independent Engineer/ expert/ independent auditor/ arbitrator as it may require for the performance of their duties and services;
- (xxxviii) at all times, to afford access to the Project Site to the authorised representatives of Authority, Senior Lenders, Independent Engineer/ expert appointed by the Authority, other persons duly authorised by any Governmental Agency having jurisdiction over the Project, to inspect the Complex and to investigate any matter within their authority and upon reasonable notice;
- (xxxix) shall be solely and primarily responsible to Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of the sub-Licensee, their employees and agents and any person acting under or for and on behalf of the Concessionaire or the sub-Licensee, the sub-contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees;
- (xl) shall be liable for and shall indemnify, protect, defend and hold harmless Authority, Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of Applicable Laws and Applicable Permits;
- (xli) support, cooperate with and facilitate the Authority in the implementation and operation of the Project and Project Facilities in accordance with the provisions of this Agreement;
- (xlii) not to alienate either by way of transfer, sale or mortgage any of the land comprising the Project Site.

The Concessionaire shall acknowledge and recognise that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

8.2 Minimum Equity requirements

- 8.2.1 The aggregate shareholding of the Consortium Members (in case of Consortium) in the issued and paid up equity share capital of the Concessionaire (here the term "Concessionaire" connotes only the special purpose vehicle as formed by the Consortium Members) shall be not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the COD and thereafter 26% (twenty six) till the Transfer Date/ issuance of Vesting Certificate.
- 8.2.2 In addition to the above obligations, the lead member of the Consortium i.e., ----- and all other Members of the Consortium whose experience was evaluated for the purposes of qualification, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and each such member shall, for a period of 2 (two) years from the COD of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost.



- 8.2.3 In case the Selected Bidder is a single entity, then it shall hold shareholding in the issued and paid up equity share capital of the Concessionaire, of not less than 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the COD and thereafter 26% (twenty six) till the Transfer Date/ issuance of Vesting Certificate.
- 8.2.4 At no stage shall any change in the aforesaid equity components/ shareholding patterns be made by the Consortium Members/ Selected Bidder without obtaining prior approval from the Authority. On an application made for the purpose, the Authority may permit the change of equity components/ shareholding patterns, 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.
- 8.2.5 In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Authority.
- 8.3 Disclaimer**
- 8.3.1 The Concessionaire reaffirms and assumes responsibility for all the data and designs, including survey, soil and water test, traffic data and projections and other data used in formulating its Bid.
- 8.3.2 The Concessionaire shall be deemed to have inspected and examined the Project Site before submitting the Bid, as to:
- (i) The form and nature of the Project Site, including the Project Site levels conditions, adjoining water bodies, local habitats etc.;
 - (ii) The extent and nature of the work and materials necessary for the execution and completion of the works and the remedying of any defects;
 - (iii) The means of access to the Project Site and the accommodation required for labour camps, installation of equipment, etc;
 - (iv) Availability of building materials, water, power etc;
 - (v) The requirements of operation and maintenance;
 - (vi) Any other existing condition, which has a bearing on the working conditions during construction, operation and maintenance periods.
- 8.3.3 The Concessionaire shall, by submitting its Bid, be deemed to have carried out such due diligence, inspection, etc and the Concessionaire assumes full responsibility for the data in its Bid and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgement, consistent with Good Industry Practices. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Proposal.
- 8.3.4 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Articles 8.3.1 & 8.3.2 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner



whatsoever to the Concessionaire or the Selected Bidder or any person claiming through or under any of them.

- 8.3.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof to the Concessionaire or any person claiming under or through the Concessionaire.

8.4 Sufficiency of Concession Period

The Concessionaire shall be deemed to have satisfied itself as to the correctness and sufficiency of the Concession Period as defined in this Concession Agreement. Unless otherwise stated in this Concession Agreement, the Concession Period shall cover all its obligations under this Concession Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the construction and also the subsequent Operation and Maintenance Period of this Concession Agreement.

8.5 Obligations relating to Project Agreements

- 8.5.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 8.5.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by an authorized official of the Concessionaire, 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 Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 8.5.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 8.5.4 The Concessionaire shall procure that each of the Project Agreements executed by the Concessionaire with Third Parties contain provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.



8.6 Concessionaire's Representative

- 8.6.1 The Concessionaire's Representative shall be the person named under Article 35.11 (Notifications). If at some point of time the Concessionaire is unable to provide the services of the person named as the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- 8.6.2 The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.
- 8.6.3 The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the Construction Documents, the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in this Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under this Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Project Site for a continuous period in excess of 14 (fourteen) days, a suitable replacement Person shall be appointed with the Authority's consent.
- 8.6.4 The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the powers, functions and authorities being delegated or revoked. Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

8.7 Work Programmes

- 8.7.1 The Concessionaire shall prepare in consultation with the Independent Engineer (if appointed by then) and submit a Project Implementation Schedule to the Authority before the Compliance Date. The programme shall include the following:
- (i) The order in which the Concessionaire proposes to carry out the Works, internal and external services (including each stage of design, procurement, manufacture, delivery to Project Site, construction, erection, testing and commissioning).
 - (ii) All major events and activities in the production of Construction Documents.
 - (iii) The particulars for the pre-construction reviews and for any other submissions, approvals and consents specified in this Concession Agreement.
- 8.7.2 Any alternation/ revision by the Concessionaire in the Project Implementation Schedule shall be made in accordance with Article 12.5.



- 8.7.3 If the progress of the Works does not conform to the Project Implementation Schedule, the Independent Engineer may instruct the Concessionaire to revise the Project Implementation Schedule, showing the modifications necessary to achieve completion as per Project Implementation Schedule. The Independent Engineer shall record the reasons for such revision of Project Implementation Schedule.
- 8.7.4 The Concessionaire shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Concessionaire proposes to adopt for the execution of the Works.
- 8.7.5 The Project Implementation Schedule shall be developed using PERT charts showing critical activities and milestones for completion of all works and services within the stipulated time period and submitted to Independent Engineer and the Authority.

8.8 Total Quality Management

- 8.8.1 During the Construction Period, the Concessionaire shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Concession Agreement. The Concessionaire shall also maintain adherence to such Performance Standards and Technical Requirements throughout the Operation and Maintenance Period of the Project.
- 8.8.2 The Concessionaire shall institute a quality assurance system that shall be followed during the Concession Period. The quality assurance system shall involve testing of materials, equipments and services to ensure compliance of laid down Performance Standards and Technical Requirements, the upkeep of suitable records, charts, samples, photographs, etc, as approved by Authority. Compliance with the quality assurance system shall not relieve the Concessionaire of its duties, obligations or responsibilities under this Agreement. The Authority reserves the right to inspect periodically or at random, the materials, works, records and documents, and to take measurements and tests. The Concessionaire should offer full co-operation to such checks and inspections.
- 8.8.3 During the Construction Period, details of all periodic tests, procedures and compliance documents shall be submitted to Independent Engineer for his information before each design and execution stage is commenced. When any document is issued to Independent Engineer, it shall be accompanied by the signed quality assurance statements for such document in a format approved by Independent Engineer. The Independent Engineer shall be entitled to audit any aspect of the system and recommend corrective action to be taken, if any.

8.9 Progress Reports

- 8.9.1 The Concessionaire shall prepare Monthly Reports on the progress of construction. Concessionaire shall submit one copy of the Monthly Report to the Authority and one copy of the same to the Independent Engineer. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. Reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the period to which it relates. Reporting shall continue until the Concessionaire has completed all the Works and the Construction Completion Certificate is issued. Each report shall include:-
- (i) An executive summary;
 - (ii) For the construction of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity, Concessionaire's inspections and tests;



- (iii) Copies of quality assurance documents, test results and certificates of materials;
- (iv) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (v) Comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion of construction in accordance with this Concession Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- (vi) Details of unresolved disputes and claims, if any.

8.10 Co-ordination

8.10.1 The Concessionaire shall be responsible for the co-ordination and proper execution of the Works and services, including co-ordination of any other Persons or Contractors to the extent specified in this Concession Agreement. The Concessionaire shall, upon reasonable request by the Authority, co-operate in the co-ordination of the works with the work of any other persons to whose systems the Facilities are to be connected, provided that such co-operation shall not unreasonably interfere with the carrying out of the works. The Concessionaire shall afford all reasonable opportunities for carrying out their work to:

- (a) The workmen of the Authority;
- (b) Any other persons employed by the Authority and their workmen; and
- (c) The workmen of any legally constituted public authorities that may be employed in the execution on or near the Project Site of any work not included in this Concession Agreement, which the Authority may require.

8.11 Subcontracting

The Concessionaire is entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to construction, installation of services, maintenance and operation of the Complex, the Concessionaire shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its Contractor/ sub-contractor, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of his obligations and liabilities under this Concession Agreement.

8.12 Plant and Equipment

8.12.1 The Concessionaire shall arrange for all machinery, plant and equipment necessary to complete the Works. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.

8.12.2 The Concessionaire shall maintain an adequate inventory of consumable and spare parts, and undertake periodic and preventive maintenance as required for the relevant equipments. The Concessionaire shall ensure continuous work flow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.



8.13 Access for Supervision

- 8.13.1 The Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of Vacant Possession thereof to the representatives of or Persons duly authorised by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the facilities thereon and to investigate any other matter within its authority and the Concessionaire shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.
- 8.13.2 The Persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

8.14 Materials of Construction

- 8.14.1 All materials used in construction shall conform to the Technical Requirements & Performance Standards mentioned in the Schedules. However, the Concessionaire shall have freedom to choose best quality building materials of the standard desired for a state of the art Multi-Storey Parking-cum-Commercial Complex.
- 8.14.2 The Concessionaire shall at its own cost and responsibility arrange for construction materials such as bricks, cement, steel, aggregates, soil, bituminous and asphaltic materials, and any other materials and fixtures used in the works, as well as ancillary materials such as shuttering and scaffolding, bearings, joint filers and similar materials.

8.15 Supply of Power, Water and Other Consumables

- 8.15.1 The Concessionaire shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the purposes of the Works, in the Project, for the Concession Period.
- 8.15.2 The Authority shall if requested by the Concessionaire use all reasonable endeavours to assist the Concessionaire in obtaining the supply of such services, provided that the Concessionaire shall reimburse the Authority for the cost of providing the same and further provide that no such supply or assistance, or failure to do, by the Authority shall relieve the Concessionaire of its obligations under Article 8.15.1 above. The Authority shall notify the cost to the Concessionaire. The Concessionaire shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

8.16 Safety

Within 1 month from the Effective Date, the Concessionaire shall provide to the Authority details of its safety plans and procedures for the Works, buildings, services and construction. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of work on the Project Site until the expiration of this Concession Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Concessionaire shall be responsible in the operation of machinery and equipment, use of explosives and any other work and to take all precautions to ensure safety of the staff, labourers and public.



8.17 Environmental Measures

- 8.17.1 The Concessionaire shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from construction operations.
- 8.17.2 The Concessionaire shall ensure that surface discharges and effluent from the Project Site during the Concession Period shall not exceed the permissible limits as prescribed by law.
- 8.17.3 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, its officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

8.18 Hazardous Materials

The Concessionaire shall be responsible for the removal of hazardous materials from the Project Site, and the works, in accordance with applicable Indian laws and directives and any other materials generated or released by the Concessionaire during its construction activities, which are toxic or similarly hazardous to the health or safety of persons.

8.19 Treasures/ Fossils

In the event of discovery by the Concessionaire or his employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Concessionaire shall give immediate intimation of such treasure or things to the Authority and the same shall be a property of the Authority.

8.20 Project Site Clearance

- 8.20.1 During the execution of the Works, the Concessionaire shall keep the Project Site free from all unnecessary obstruction and shall store its Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Equipment or surplus materials. The Concessionaire shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.
- 8.20.2 Within 30 (thirty) days of issue of the Construction Completion Certificate, the Concessionaire shall clear away and remove, from the Project Site, all Concessionaire's Equipment, surplus materials, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave such areas and works in a clean and safe condition to the satisfaction of Authority. Except that the Concessionaire shall be entitled to retain on any Project Site, until the expiry of the Concession Period, such Concessionaire's Equipment, materials and Temporary Works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of operation and maintenance of the Project.
- 8.20.3 Within 30 (thirty) days of the expiry of the Concession Period, the Concessionaire shall clear away and remove, from the Project Site all the Concessionaire's Equipment, surplus material, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave the Project Site in a clean, functional and safe condition to the satisfaction of Authority. Provided that if the Concessionaire fails to remove, at the end of the 30 day period, any remaining Concessionaire's Equipment, surplus material, wreckage, rubbish and Temporary Works, the



Authority may sell or otherwise dispose of such items at risk and cost of Concessionaire. The Authority shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Concessionaire, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due to the Concessionaire are insufficient to meet the Authority's costs, the outstanding balance shall be recoverable from the Concessionaire by the Authority.

8.21 Project Site Security

The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all Plant and Machinery, Materials, Concessionaire's Equipment and other things required for the completion of the Works, services and operation and maintenance of the Complex.

Unless otherwise stated in this Concession Agreement:

- (i) The Concessionaire shall be responsible for keeping unauthorised persons off the Project Site and prevent encroachment on the Project Site during the Construction Period.
- (ii) Authorised persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of its Subcontractors and employees and persons authorised by the Authority.

8.22 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/ or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

8.23 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

8.24 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

8.25 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a user friendly and conducive environment for the differently abled and for elderly persons using the Project.



8.26 Project Asset and Project Facilities Register

The Concessionaire shall prepare and maintain register (the “**Project Asset and Project Facilities Register**”) of all the Project Asset and Project Facilities constructed by it. The Project Asset and Project Facilities Register shall be prepared as soon as each of the Project Asset and Project Facilities provided for in the approved plan are completed. The Concessionaire shall update the Project Asset and Project Facilities Register as and when any additional asset or facility is added at the Site or any one of them is replaced by the Concessionaire as part of the Maintenance Requirements. The Concessionaire shall provide one copy each of the Project Asset and Project Facilities Register to the Authority, Independent Engineer and the Maintenance Board within 30 days of preparing or updating the same.

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ARTICLE 9: DRAWINGS AND SPECIFICATIONS

9.1 Design Obligations

- 9.1.1 The Concessionaire shall have the complete responsibility at its own cost and risk to plan and design the Complex, subject to approval of detailed design of the Concept Plan and drawings prepared as per Applicable Laws including Building Bye Laws, Developments Envisaged (Schedule-I), Scope of Work, Technical Requirements and Performance Standards (Schedule-III), by the Design Approval Committee. The selection of appointment of Architect, Consulting Engineer if any, Structural Engineers for internal and estate services and other specialists and constructing agencies etc. shall be the permitted domain of the Concessionaire. Nevertheless, the Concessionaire undertakes to submit to the Authority the names of Architects, Consulting Engineers etc. and other specialists as and when required by the Authority and Independent Engineer.
- 9.1.2 The Concessionaire holds itself, its designers and design sub-consultants, specialists as having the requisite experience and capability necessary for the preparation of the detailed structural design and planning and design of services. The Concessionaire undertakes that the designers/ engineers/ specialist shall be available to attend discussions with the Authority, the Independent Engineer or with members of the Maintenance Board at all reasonable times during the Concession Period.
- 9.1.3 The Concessionaire shall submit a “**Structural Safety Certificate**” of the proposed Complex from competent structural engineer before commencement of the Commercial Operations. However, the certificate shall also be counter certified/ signed by the Independent Engineer.

9.2 Construction Documents

- 9.2.1 The Concessionaire shall prepare Construction Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and construction contractor and subcontractors sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Independent Engineer and the Authority shall have the right to review and inspect the Construction Documents.
- 9.2.2 Each of the Construction Documents shall, when considered ready for use, be submitted to the Independent Engineer and the Authority for pre-construction review. In this Article, “**Review Period**”, means the period required by Independent Engineer and the Authority, which unless otherwise stated shall not exceed 14 (fourteen) days, calculated from the date on which the Independent Engineer receives the Construction Documents and the Concessionaire's notice that it is considered ready, both for a pre-construction review in accordance with this Article, and for use. If the Independent Engineer, within such Review Period, notifies the Concessionaire that a Construction Document fails (to the extent stated) to comply with some Technical Requirements, it shall henceforth be rectified, resubmitted and reviewed in accordance with this Article, at the Concessionaire's cost.
- 9.2.3 For each part of the Works, and except to the extent that the prior consent of Independent Engineer shall have been obtained:
- (i) Construction shall not commence prior to the expiry of Review Period for the Construction Documents, which are relevant to the design, and construction of such part;
 - (ii) Construction of Works, providing installation and laying of services shall be in accordance with such Construction Documents; and



- (iii) If the Concessionaire wishes to modify any design or document, which has previously been submitted for such pre-construction review, the Concessionaire shall immediately notify Independent Engineer and shall subsequently submit revised documents to the Independent Engineer for pre-construction review.

- 9.2.4 If Independent Engineer instructs that further Construction Documents are necessary for carrying out the Works, the Concessionaire shall, upon receiving Independent Engineer's instructions, prepare such Construction Documents.
- 9.2.5 Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Documents and the Works that have been implemented following the defective Construction Documents shall be rectified by the Concessionaire at its own cost.
- 9.2.6 No comment made by Independent Engineer in relation to or any failure to comment on the Construction Documents within the Review Period shall constitute approval of such documents.
- 9.2.7 Review of the Construction Documents by Independent Engineer shall neither relieve the Concessionaire of its obligations, responsibilities and liabilities under this Concession Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner whatsoever.

9.3 Design Warranty

The Concessionaire warrants to the Authority that the Works, services, facilities, infrastructure will be designed, constructed, tested and commissioned as per Performance Standards and that it will otherwise perform its obligations under this Concession Agreement:-

- (i) Using all due skill, care and diligence expected of a Concessionaire in executing a work of this nature and magnitude;
- (ii) In a proper workmanlike and careful manner with properly equipped facilities and non-hazardous materials and in accordance with Good Industry Practices;
- (iii) So that the Works when completed shall be in accordance with Performance Standards and all relevant requirements of this Concession Agreement unless agreed otherwise in writing by the Authority;
- (iv) So that the Works when completed shall be capable of being used, operated and maintained in accordance with the requirements of the Project and Good Industry Practices;
- (v) So that the Works when completed shall comply with the provisions of any Applicable Laws in effect during the Concession Period; and
- (vi) There shall be no design defects in the structure and serviceability of the Complex for the duration of the Concession Period.

9.4 Technical Requirements/ Performance Standards

- 9.4.1 The structural design of buildings, design of internal and estate services/ utilities/ infrastructure, the Construction Documents, the execution, the completed Works and services, the operation and maintenance shall comply with technical standards and specifications, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components, Good Industry Practices and the Performance Standards specified in the Schedules



and the Technical Requirements (which are minimum applicable) or as defined by law. References in this Concession Agreement to Technical Requirements, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components and Good Industry Practices shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise. If substantially changed or new applicable Technical Requirements or regulations come into force after the Effective Date, the Concessionaire shall submit amended proposals for compliance to such new standards/requirements to the Independent Engineer. In the event that the Independent Engineer determines that such proposals are found necessary, expedient and warranted, it shall treat this as a Variation, and then intimate the Authority within 42 (forty two) days of receipt of the amended proposals to initiate a Variation in accordance with Article 18.

- 9.4.2 The Concessionaire shall be liable for and shall indemnify, protect and hold harmless at all times, the Authority, the Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the Concessionaire's failure to comply with the applicable laws in relation to execution of Works and construction, operation and maintenance of the Complex.

9.5 Test Certificates and Samples

The Concessionaire shall submit the following samples and relevant information to Independent Engineer and Authority before its use in the Construction or Maintenance of the Project:-

- (i) Manufacturer's standard samples of Materials;
- (ii) Samples (if any) specified in the Authority's and Independent Engineer's requirements;
- (iii) Samples (if any) specified by the Concessionaire, to be of best quality;
- (iv) Additional samples instructed by the Authority or the Independent Engineer;
- (v) Each sample shall be labelled as to origin, make and manufactures and its intended use; and
- (vi) Test certificate or samples for building materials such as cement, steel, bituminous materials, or any other materials proposed to be used.

9.6 Execution Drawings

The Concessionaire shall prepare and keep up-to-date, a complete set of Execution records of the execution of each section of the Works, showing the exact locations, sizes and details of the Works, internal and estate services/ utilities/ infrastructure as executed with cross references to all relevant requirements and data sheets. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Article. The Concessionaire shall prepare and submit to the Authority and the Independent Engineer one copy each of the Execution drawings for inspection. The Concessionaire shall obtain the consent of Independent Engineer as to their size, the referencing system, and other pertinent details. However, it shall neither relieve the Concessionaire of its obligations and liabilities under this Concession Agreement nor shall the Independent Engineer or the Authority be liable for the same, in any manner whatsoever.

9.7 Final Drawings

- 9.7.1 The Concessionaire shall submit to the Authority and the Independent Engineer one detailed and legible copy each of "Final" records and drawings of the execution of each section of the Works,



showing the exact final locations, sizes and details of the Work as executed and completed with cross references to all relevant requirements and data sheets.

- 9.7.2 The Concessionaire shall ensure that the Authority has the right to use and protect the design from infringement and to further enforce such right against any person, in accordance with the terms of this Concession Agreement.
- 9.7.3 This Article shall also be applicable if any new Works, strengthening, rehabilitation of any part of the Complex are carried out during the Operation and Maintenance Period. The Concessionaire shall keep one set of Final Drawings at Project Site for the entire Concession Period.

9.8 Patents/ Copy Right

If the Concessionaire desires to use any designated device, materials or any process covered by letters of “**Patents**” or “**Copyrights**”, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Patents owner. A copy of the agreement shall be filed with the Authority.

9.9 Levies

Except where otherwise stated in this Concession Agreement, the Concessionaire shall pay all tonnage, levies, cess, royalties, rent and other payments or compensation, if any, for Plant and Machinery or other materials required for the Works.



ARTICLE 10: LABOUR

The Concessionaire shall be solely responsible for the liability, cost, and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article.

10.1 Engagement

The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their wages/ payment, boarding, lodging, health, safety, food arrangement, transport, etc. as per Applicable Laws.

10.2 Information on Labour and Equipment

The Concessionaire shall furnish, if required by the Authority or the Independent Engineer, a detailed return in such form and at such intervals as may be prescribed, showing the details of the staff, labour, plant and equipment deployed on the Project by the Concessionaire.

10.3 The Authority's Staff

The Concessionaire shall be under no obligation to recruit any or part of the staff and labour from amongst persons in the service of the Authority.

10.4 Labour Laws

The Concessionaire shall ensure that all labour laws, rules and regulations will be followed and the Concessionaire shall be the primary employer of labour employed by it for the Project. The Concessionaire shall keep the Authority indemnified and harmless in this regard in the event of any claim, fine, action or suit brought against the Authority for non-compliance by the Concessionaire with any of the applicable labour laws.



ARTICLE 11: MATERIALS AND WORKMANSHIP

11.1 Execution

All Works shall be executed in the manner set out in this Concession Agreement. Where the manner of execution is not set out in this Concession Agreement, the Works shall be executed under the instructions of the Independent Engineer during the Construction Period and the Authority during the Operation and Maintenance Period, in a proper, workmanlike and careful manner and as per Good Industry Practice, with properly equipped facilities and non-hazardous materials.

11.2 Inspection

- 11.2.1 The Authority and Independent Engineer shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all Works under this Concession Agreement. The Concessionaire shall give the Authority and Independent Engineer full opportunity to inspect, examine, measure and test any Works on Project Site or wherever being carried out.
- 11.2.2 The Concessionaire shall give due notice to the Authority and Independent Engineer whenever such Work is ready, before packaging, covering up or putting out of view, including foundation works. The Independent Engineer and the Authority shall then respond to the Concessionaire with its intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Concessionaire fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good at Concessionaire's own cost.
- 11.2.3 If the Independent Engineer or the Authority fails to respond to the Concessionaire's notice within 14 (fourteen) days of receiving the notice, it shall be deemed to imply that they do not consider it necessary to inspect the Works mentioned in the notice.

11.3 Testing during Construction Period

- 11.3.1 If the Authority or the Independent Engineer requires Tests at any time during the Construction Period, the Concessionaire shall provide all documents and other information necessary for testing and other such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently. The Concessionaire shall provide engineering support and technical know-how as the Authority or the Independent Engineer shall reasonably request for the purpose of the Tests.
- 11.3.2 The Concessionaire shall provide sufficient and suitably qualified and experienced staff to carry out such Tests. The Independent Engineer and the Authority shall attend all such Tests.
- 11.3.3 If Independent Engineer and Authority do not attend at the time and place agreed the Concessionaire may proceed with the Tests, unless the Independent Engineer or Authority instructs the Concessionaire otherwise. In such a situation, such Tests shall be deemed to have been made in the presence of the Authority and the Independent Engineer.
- 11.3.4 The Concessionaire shall promptly forward to the Independent Engineer and the Authority duly certified reports of the Tests. If the Independent Engineer or the Authority has not attended the Tests, he shall accept the readings as accurate. When the specified Tests have been passed, Independent Engineer shall endorse the Concessionaire's Test certificate, or issue a confirmation to it to that effect and intimate Authority forthwith.



11.3.5 The Authority is entitled to insist for the Concessionaire to carry out any Tests of any type, as it deems fit. If such Tests are not carried out in accordance with general Good Industry Practises, then the Authority may carry out the tests and the Cost of which shall be borne by the Concessionaire.

11.4 Rejection

11.4.1 If, as a result of inspection, examination or testing under Article 11.3, the Independent Engineer decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with this Concession Agreement, the Independent Engineer may reject such plant, materials, design or workmanship and shall notify the Concessionaire within 7 (seven) days recording clearly his reasons thereof.

11.4.2 The Concessionaire shall then, within the time permitted by the Independent Engineer, make good the defect and ensure that the rejected item or work complies with this Concession Agreement. If the Independent Engineer requires such plant, materials, design or workmanship to be re-tested, all such Tests shall be repeated under Article 13.3 at the cost of the Concessionaire.

11.5 Ownership

Each item of Plant and Machinery and the Materials shall be the property of the Concessionaire till the expiry of the Concession Period or upon the premature termination of this Concession Agreement. The Concessionaire shall assume full responsibility for the Plant and Machinery, Materials and Works at the Project Site.

11.6 Suspension of unsafe Construction Works

11.6.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the pedestrians, neighbouring areas and public at large.

11.6.2 The Concessionaire shall, pursuant to the notice under Clause 11.6.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the public. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.6 shall be repeated until the suspension hereunder is revoked

11.6.3 All reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire.

11.6.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Concessionaire shall give notice to the Authority. After receipt of such notice, Authority shall consult the Independent Engineer and proceed in accordance with Article 7.3 to agree or determine any extension of Construction Period and Concession Period to which the Concessionaire is entitled under Article 12.4.



11.6.5 Suspension for over 30 (thirty) days

If Suspension under this Article 11.6 has continued for more than 30 (thirty) days, and the Suspension is not due to a cause attributable to the Concessionaire, the Concessionaire may by notice to Concessing Authority require permission to proceed within 30 (thirty) days. If permission is not granted within that time, and if such suspension affects substantially the whole of the Works, the Concessionaire shall be entitled to treat the Suspension as a Concessing Authority Event of Default under Article 22.1, and the Concessionaire may proceed to terminate the Concession under Article 22.2.

11.6.6 Resumption after Suspension

After receipt of permission or of an instruction to proceed, the Concessionaire shall, after notice to the Concessing Authority, and together with the Independent Engineer, examine the Works and the Plant and Machinery and Materials affected by the Suspension. The Concessionaire shall make good any deterioration or defect in or loss of the Works of Plant and Machinery or materials, which has occurred during the period of Suspension. The Concessionaire shall then resume work with reasonable expediency.



ARTICLE 12: COMMENCEMENT TIME AND DELAYS

12.1 Commencement

- 12.1.1 The rights and obligations of the Parties under this Concession Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Concessionaire elects to carry out prior to the Effective Date including investigations, surveys, design, etc shall be entirely at the risk and Cost of the Concessionaire.
- 12.1.2 Any delay on the part of the Authority (unless such delay is contributed by the Concessionaire) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

12.2 Time for Completion

The construction of the Multi-Storey Parking-cum-Commercial Complex shall be in accordance with the “**Scheduled Date of Construction Completion**”, provided that this period, as stated, may be extended in accordance with Articles 12.4 and 12.5.

12.3 Delays Caused by Competent Authorities

If the following conditions apply:-

- (i) The Concessionaire has diligently followed the procedures laid down by the Competent Authorities and under Applicable Laws, and
- (ii) The Competent Authorities delay, impede or prevent the Concessionaire from complying with the Time of Completion of Construction or any revision thereof

Then any such delay will be considered as a cause of delay giving an entitlement to extension of time under Article 12.4.

12.4 Extension of Time

- 12.4.1 The Concessionaire may apply for an extension of the Scheduled Date of Construction Completion if it is or will be delayed either before or after the Scheduled Date of Construction Completion, by any of the following causes:-
- (i) A Variation;
 - (ii) A Force Majeure event;
 - (iii) A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;
 - (iv) Any delay, impediment or prevention by the Authority;
 - (v) Any delay caused by Competent Authorities under Article 12.3 above.

Provided that the Concessionaire shall at all times use its best endeavours to minimise any delay in the performance of its obligations under this Concession Agreement, whatever may be the cause of such delay.



- 12.4.2 Upon occurrence of any of the events described in Article 12.4.1 above, if the Concessionaire intends to apply for an extension of the Scheduled Date of Construction Completion, the Concessionaire shall give notice to the Independent Engineer and the Authority of such intention as soon as possible and in any case within 28 (twenty eight) days of the start of the event giving rise to any such delay, together with any other notice required by this Concession Agreement and relevant to such cause. Any such notice shall state the extent of the actual and anticipated delay and its anticipated effect on the Scheduled Date of Construction Completion, and shall specify the steps the Concessionaire proposes to take to minimise such delay. The Concessionaire shall keep such records as may be necessary to substantiate any application, either on the relevant Project Site or at another location acceptable to the Independent Engineer and the Authority, and such other records as may reasonably be requested by the Authority and Independent Engineer. The Concessionaire shall provide and permit the Authority and the Independent Engineer to inspect all such records.
- 12.4.3 Within 28 (twenty-eight) days of the first day of such delay (or such other period as may be agreed by the Authority), the Concessionaire shall submit full supporting details of its application. Except that, if the Concessionaire cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 (seven) days, the Concessionaire shall submit interim details at intervals of not more than 28 (twenty-eight) days (from the first day of such delay) and full and final supporting details of its application within 21 (twenty-one) days of the last day of delay.
- 12.4.4 Provided that the Concessionaire has complied with this Article, the Authority shall proceed in accordance with Article 7.2 to determine either prospectively or retrospectively such adjustment as may be due, taking into account all relevant circumstances. The Authority shall notify the Concessionaire accordingly. When determining each extension of time, the Authority shall review its previous determinations and may revise, but shall not decrease, the extension, and provided that the extension of time is not a consequence of any negligence, default or breach of the Concession Agreement by the Concessionaire or those for whom it is responsible.
- 12.4.5 In the event that construction completion is not achieved by the Scheduled Date of Construction Completion for any reason other than Force Majeure or solely as a result of the Authority being in default of any of its obligations under this Agreement or reasons attributable to any Competent Authority, the Concessionaire shall pay to the Authority Damages for delay beyond the Scheduled Date of Construction Completion to the extent of 0.5% (zero point five percent) of the Construction Performance Security for each day of delay or part thereof until Construction Completion Date is achieved. Provided that nothing contained in this Article 12.4.5 shall be deemed or construed to authorize any delay by the Concessionaire in achieving Construction Completion Date. In such an event, the duration of the Concession Period shall not be adjusted and the Concessionaire shall be solely responsible for the corresponding reduction of the period for which the Project Facility/ Complex is used for Commercial Operations and any reduction in revenue as a consequence thereof.

In the event that Construction Completion Date does not occur within 120 (one hundred and twenty) days from the Scheduled Date of Construction Completion, the Authority shall be entitled to invoke the Construction Performance Security and to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 22 hereof.

12.5 Progress

- 12.5.1 If at any time, the Concessionaire's actual progress falls behind the Project Implementation Schedule referred to in Article 8.7, or it becomes apparent that it will so fall behind, the Concessionaire shall submit to Authority and Independent Engineer a revised Project Implementation Schedule taking into account the prevailing circumstances. The Concessionaire



shall, at the same time, notify Authority and Independent Engineer of the steps being taken to expedite progress so as to achieve completion within the Scheduled Date of Construction Completion as specified under Article 12.2.

- 12.5.2 If the revision of the Project Implementation Schedule is necessitated due to any default, negligence or oversight of the Concessionaire, the Concessionaire shall be responsible, to take all further steps for the rectification and revision of the programme and the underlying Works at its cost.
- 12.5.3 Notwithstanding anything to the contrary in this Article, a revision in the Project Implementation Schedule that results in the extension of the Scheduled Date of Construction Completion will become effective only after it has been approved in writing by the Authority.

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ARTICLE 13: COMPLETION TESTS

13.1 Notice to Test

As soon as construction of the Works is, in the opinion of the Concessionaire, substantially complete, the Concessionaire shall so notify the Authority and the Independent Engineer that the Concessionaire is ready to conduct Tests to demonstrate that the Works have been completed in accordance with the specifications and standards and provisions of this Concession Agreement.

13.2.1 Tests on Completion

13.2.1 Before commencement of the Tests, the Concessionaire shall ensure that it has provided the Authority with all required documents under Articles 8.6 and 8.7. The provisions of Article 11.3 shall be applicable *mutatis mutandis* to the carrying out of the Tests under this Article. The Concessionaire shall give to Authority and the Independent Engineer not less than 28 (twenty-eight) days' notice of its intent to carry out the Tests. Unless otherwise agreed, such Tests shall be carried out within 14 (fourteen) days after this date, or on such day or days as the Independent Engineer shall instruct.

13.2.2 The Tests shall include checking of construction records, documents and drawings, trial runs, checks of profiles and levels, or any other Tests that may be reasonably necessary to confirm that the Works meet the Technical Requirements/ standards. The Independent Engineer after consultation with the Authority, shall draw up a detailed list of Tests, along with the acceptable standards to be carried out by the Concessionaire and shall furnish the same to the Concessionaire within 14 (fourteen) days of the receipt of the Concessionaire's intention to carry out the Tests.

13.2.3 The Independent Engineer and the Authority shall monitor the results of the Tests to determine the compliance of the Project with the standards and Technical Requirements. The Concessionaire shall provide the Independent Engineer and the Authority with the copies of all Test data and Test results.

13.2.4 The results of the Tests on Completion shall be compiled and evaluated by the Independent Engineer. Upon the Independent Engineer determining the Tests to be successful, the Independent Engineer shall issue the Construction Completion Certificate in accordance with Article 14.1.

The Independent Engineer may, at the request of the Concessionaire, issue a "Provisional Certificate" substantially in the form set forth in **Schedule-XII**, subject to the express approval of the Authority, if the Tests are successful and the Commercial Operations of the Project Facility/ Complex (or any part thereof if applicable) may commence though certain minor and finishing works or things forming part thereof, which in the opinion of the Independent Engineer do not, in any manner whatsoever affect the safety of the Works, Complex or, in any material respect, the Commercial Operations thereof, are not yet complete. In such an event, such Provisional Certificate shall have appended thereto a list of outstanding Works items to be completed along with the duration for the completion of each activity (Punch List), signed jointly by the Independent Engineer and the Concessionaire. Upon completion of all the Punch List items to the satisfaction of the Independent Engineer, the Independent Engineer shall issue the Construction Completion Certificate in accordance with Article 14.1.

Provided however, the Provisional Certificate shall be issued by the Independent Engineer only after the Concessionaire has provided to the Independent Engineer a copy of all the statutory approvals (in the form of completion certificate and/ or occupation certificate and/ or no objection



certificate, etc.) required by the Concessionaire under Applicable Laws from Competent Authority/ies in respect of the Construction Works completed at the Project Site and for subsequent operationalizing of the Project Facility.

13.3 Re-Testing

If the Independent Engineer or the Authority is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of such conclusion stating the reasons for such dissatisfaction. In such an event Article 11.4 shall apply and the Authority or the Independent Engineer may require such failed Tests and the Tests on Completion of any related work, to be repeated under the same terms and conditions.

13.4 Failure to Pass Tests

13.4.1 If the Works or parts thereof, fail to pass the Tests on completion repeated under Article 13.3, the Independent Engineer shall be entitled to:

- (i) Order further repetition of Tests on completion under Article 13.4, in which case the Concessionaire shall be obliged to carry out such adjustments, repairs, replacements and/or modifications as may be required to ensure that the Works or part achieve the requirements; or
- (ii) Reject the Works or part (as the case may be), if the Construction Completion Certificate or the Provisional Certificate could not be issued within 90 (Ninety) days from the date the Concessionaire had notified the Independent Engineer about the actual date of the first Test pursuant hereto for reasons attributable to the Concessionaire, in which event, the Authority shall have the same remedies against the Concessionaire as are provided under Article 22.3.



ARTICLE 14: COMPLETION OF CONSTRUCTION

14.1 Construction Completion Certificate

14.1.1 The construction work in this Concession Agreement shall not be considered to be completed until the Construction Completion Certificate has been signed by the Independent Engineer and delivered to the Authority and the Concessionaire, stating that the Concessionaire has completed its construction obligations under the Concession Agreement and has obtained all the approvals/ Applicable Permits under Applicable Laws from the Competent Authorities to the Independent Engineer's satisfaction.

14.1.2 The Construction Completion Certificate shall be given by the Independent Engineer within 28 (twenty-eight) days after:

- (i) The Concessionaire has provided all the Construction Documents (including completion drawings) for the Works;
- (ii) The Concessionaire has remedied any defects in the Works;
- (iii) The Concessionaire has completed and tested all the Works, as specified by the Independent Engineer;
- (iv) The Works as an integrated structure is in conformity with the Technical Requirements;
- (v) The Concessionaire has submitted “Structural Safety Certificate”; and
- (vi) The Concessionaire has provided a copy of all the statutory approvals (in the form of completion certificate and/ or occupation certificate and/ or no objection certificate, etc.) required by the Concessionaire under Applicable Laws from Competent Authority/ies in respect of the Construction Works completed at the Project Site and for subsequent operationalizing of the Project Facility.

14.1.3 The Independent Engineer would be required to issue the “Construction Completion Certificate” substantially in the form set forth in **Schedule-XII** after the construction of the Complex at the Project Site has been completed in all respect and is ready to use. However, the required documents as stated in Article 14.1.2 shall be submitted by the Concessionaire and also, comply with all the obligations, wherein mentioned in the Concession Agreement, required to be met before and after the issuance of the Construction Completion Certificate.

14.2 Construction Completion Certificate not a Cessation of Liability

14.2.1 The issuance of the Construction Completion Certificate under this Article shall not in any way:

- (i) Alter the liabilities of the Concessionaire;
- (ii) Constitute a waiver of unfulfilled obligations;
- (iii) Bar remedy and rectification of defects;
- (iv) Constitute an acceptance of the Works; and



- (v) Transfer possession of the Complex/ Project Facility to the Authority.

But it shall be a milestone for reckoning the commencement of Commercial Operations and permit the Concessionaire to commence Commercial Operations of the Complex.

14.3 Rectification

If the Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications after completion of construction to maintain the Works etc. the Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the Complex, then such request shall only be granted if the Concessionaire's request is reasonable under all the circumstances, having regard to the Concessionaire's obligations to keep the Complex operation open during all hours of the day.

14.4 Commercial Operations Date (COD)

The Project Facility or any part thereof shall be deemed to be completed when the Construction Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of this Agreement, and accordingly the date of commercial operations of the Project shall be the date on which such Construction Completion Certificate or the Provisional Certificate is issued (the “COD”). The Project Facility or any part thereof shall enter into Commercial Operations/ commercial services on COD whereupon the Concessionaire shall be entitled to demand and collect User Charges in accordance with the provisions of this Agreement.



ARTICLE 15: OPERATIONS AND MAINTENANCE PERIOD

15.1 Commencement and Duration

The Operation and Maintenance Period of the Project shall commence from the date of issue of Construction Completion Certificate (Commercial Operations Date) and in its absence, from the date of Provisional Certificate and terminate at the Transfer Date.

15.2 Obligations of the Concessionaire during Operations and Maintenance Period

15.2.1 During the Operations and Maintenance Period (“O&M Period”), the Concessionaire shall be responsible for performing all the obligations and complying with the Performance Standards laid down in **Schedule III** of this Concession Agreement.

15.2.2 In the event of failure to perform the obligations or comply with the Performance Standards laid down in **Schedule III**, the Concessionaire shall be liable to a penalty which shall not exceed the Operation & Maintenance Performance Security and for the enforcement of which the Performance Security can be used. The amount of penalty payable by the Concessionaire for a default under this provision shall be determined by the Maintenance Board.

15.2.3 The Concessionaire recognises and acknowledges the fact that the Project is intended to provide a public facility, and the Concessionaire shall have no right to prevent, impede or obstruct any bona fide Users from using the Complex, save and except for regulating such usage under the terms of this Concession Agreement. Under exceptional circumstances, if the Concessionaire apprehends any detriment to the Complex it shall seek instructions from the Authority, whose decision in this regard shall be final.

15.3 Scope of Work during Operations and Maintenance Period

15.3.1 In addition to what is provided elsewhere in this Concession Agreement, the Concessionaire shall have the following obligations and responsibilities during the Operations and Maintenance Period:-

- (i) The Concessionaire shall be responsible, at his own cost, for all the maintenance and repairs of the Complex and all its components, including roads, buildings, all services and allied works. The Concessionaire shall also carry out rectification of any defects in the design or construction of any component of the Works.
- (ii) The Concessionaire shall monitor the traffic movement at the entrances to and exits from the Complex to prevent traffic jams, obstruction to movement of pedestrians, accidents and emergencies, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary.
- (iii) The Concessionaire shall deploy adequate trained staff to manage complete operations of the Car Parking and the other components of the Project as per Performance Standards detailed in Schedules of this Concession Agreement. The Concessionaire shall bear the entire responsibility and liability for operation of the Project.
- (iv) The Concessionaire shall be entitled to levy, demand, collect, retain and appropriate the User Charges as per Article 16 of this Concession Agreement.



- (v) The Concessionaire shall 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 Concessionaire.
- (vi) The Concessionaire 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 Complex.
- (vii) The Concessionaire shall ensure general upkeep of the Project Area in accordance with the development envisaged.

15.4 Reporting

- 15.4.1 The Concessionaire shall in consultation with the Independent Engineer prepare and evolve, not later than 60 days prior to the Scheduled Construction Completion Date, a draft Operation and Maintenance Manual (the “**O&M Manual**”) providing the detailed plan for regular and preventive maintenance of the Complex. The Concessionaire shall submit the draft of the O&M Manual to the Authority and Independent Engineer for its review. The O&M Manual will become final only after it has received the final approval of the Authority. Within a period of 30 (thirty) days from the date of receipt of the O&M Manual, the Authority shall revert to the Concessionaire with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of the Authority. This process shall be followed by the Concessionaire until the Authority has given its final approval in writing.
- 15.4.2 Not later than 28 (twenty-eight) days prior to the start of each Financial Year, the Concessionaire shall provide to the Authority its proposed programme for maintenance (“**Maintenance Programme**”) for the said Financial Year, as per Good Industry Practice.
- 15.4.3 The Concessionaire shall undertake inspection of the Complex at least once every month, to determine the condition of the Complex including its compliance with the standards as set out in the Schedules to this Concession Agreement and the O&M Manual. On the basis of this inspection and the activities carried out during the month, the Concessionaire shall, at its cost, prepare and submit to the Authority and Independent Engineer, 3 (three) copies of the “**Monthly Project Report**” for any calendar month within 7 (seven) days of the next calendar month. The “Monthly Project Report” should include the following:
 - (i) The contract value of the works executed during the month;
 - (ii) Any cost variations occurring due to Change in Law;
 - (iii) Any other variation which may have become due in accordance with this Concession Agreement;
 - (iv) Any claims of the Concessionaire;
 - (v) A list of items requiring repair or maintenance and a maintenance plan for the next calendar month.



15.4.4 The Concessionaire 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 Concessionaire shall also submit to the Authority the following:

- (i) Upon obtaining knowledge thereof, any of;
 - (a) Litigation, claims, disputes or actions, threatened or pending concerning the project;
 - (b) Refusal to grant, renew or extend, or any action threatened or pending that might affect any Clearance;
 - (c) All penalties or notices of violation issued by any Competent Authority.
- (ii) Information concerning new or significant aspects of the Project, including any material complaint about the Facilities from any person;
- (iii) If the Authority, acting reasonably, requests a report or document regarding any information regarding the Facilities, the Concessionaire shall prepare a draft of such document within any reasonable time limit prescribed.

15.4.5 The Authority may from time to time specify any changes in the formats or periodicity for any reports.

15.4.6 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless, the Authority, the Authority's officers, employees and agents from any liability, costs, expenses, settlements and judgements arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance.

15.5 Cost of Remedying Defects

15.5.1 If any defect appears or damage occurs, the Authority shall promptly notify the Concessionaire in writing and the Concessionaire shall execute all work of amendment, reconstruction and remedying defects, imperfections or other faults or damages, as may be instructed by the Authority.

15.5.2 If in the reasoned decision of the Authority, the defects are due to:-

- (i) The design of the Works,
- (ii) Plant and Machinery, Materials or workmanship not being in accordance with this Concession Agreement; or
- (iii) Failure by the Concessionaire to comply with any of its other obligations,

All works shall be executed by the Concessionaire at its own cost.

15.5.3 If such necessity is due to any other cause, Authority shall notify the Concessionaire accordingly and seek agreement to an adjustment and Article 18 shall apply to such work. In the event that Concessionaire requires an extension of time to carry out the rectification of such defects the provisions of Article 12.4 shall apply.



15.6 Subsequent Tests

If the remedying of any defect or damage is such that it may affect the efficiency or performance of the Works, the Authority may require the Concessionaire to carry out at the Concessionaire's cost such Tests as necessary. The requirement for such Tests shall be notified within 28 (twenty-eight) days after the defect or damage is remedied.

15.7 Failure to Remedy Defects

15.7.1 If the Concessionaire fails to remedy any defect or damage within a reasonable time, the Authority may fix a date on or by which to remedy the defect or damage, and give the Concessionaire reasonable notice of such date. If the Concessionaire fails to remedy the defect or damage by such date, the Authority may (at its sole discretion):-

- (i) Carry out the work itself or by others, in a reasonable manner and at the Concessionaire's cost, but the Authority shall have no responsibility for such work. The costs properly incurred by the Authority in remedying the defect or damage shall be recoverable from the Concessionaire by the Authority, including recovery from the Performance Security. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty percent) of such cost shall be paid by the Concessionaire to the Authority as Damages; or
- (ii) If the defect or damage is such that the Authority has been deprived of substantially the whole of the benefit of the Works, terminate this Concession Agreement but without relieving the Concessionaire of liability for breach of this Concession Agreement.

15.7.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 15.7.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 15.7.2 and debit the same to O&M Expenses.

15.8 Overriding powers of the Authority

15.8.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Operation and Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

15.8.2 In the event that the Concessionaire, upon notice under Clause 15.8.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 15.9.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be



entitled to recover them from the Concessionaire in accordance with the provisions of Clause 15.7 along with the Damages specified therein.

- 15.8.3 In the event of a national emergency, public agitation or any other act specified in Clause 21.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 21. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 15.8, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

15.9 Accidents

- 15.9.1 In the event of an accident, the Concessionaire shall, by most expeditious means, inform the concerned civil and Police Authorities and also the Authority. The Concessionaire's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the above officials, as it shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Concessionaire shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of the wreckage or debris and for cleaning the Project Site. If any portion of the Complex suffers any damage, the Concessionaire shall, with the consent of Authority, arrange for the repair and rectification thereof.
- 15.9.2 The Concessionaire shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Concessionaire in accordance with Article 7.2.
- 15.9.3 Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

15.10 Installation and Operation of CCTV

The Concessionaire shall install and operate a closed circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.



ARTICLE 16: USER CHARGES

16.1 Levy and Appropriation of User Charges

- (i) On and from the COD till the Transfer Date, the Concessionaire shall be entitled to, determine, revise, charge, demand, collect and recover from the Users of the Project Facility, User Charges towards use of facilities at the Project Facility, or any other goods, services, facilities and amenities etc. that are provided or arranged by the Concessionaire at the Project in accordance with this Agreement.
- (ii) Other than Parking Fees rates, the Concessionaire shall be free to decide on the rates of tariff and prices payable by Users/ visitors for availing various services/ facilities and/ or undertaking the activities being offered at the Project Facility at market driven rates.
- (iii) The Concessionaire may formulate, publish and implement appropriate scheme(s)/ discounts for attracting Users/ visitors to the Commercial Area.
- (iv) The Authority expressly recognises that the right of the Concessionaire or its Contractors 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 Law and under this Concession Agreement for the recovery of User Charges.

16.2 Display of Parking Fee/ User Charges rates

- 16.2.1 The Concessionaire shall conspicuously display the Parking Fees/ User Charges payable for entry, parking, various services, facilities, lodging, eatables, and entertainment/ adventurous activities which shall be easily readable from a distance of 10 metres with a naked eye.
- 16.2.2 The Concessionaire shall, from time to time, inform the Authority of the applicable User Charges. Such information shall be communicated at least 15 (fifteen) days prior to the revision of such charges under and in accordance with this Agreement. Provided however, the Parking Fees and its increase in applicable rate shall be strictly governed by the rates as mentioned in **Schedule VIII**.



ARTICLE 17: REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (i) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- (iii) this Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- (iv) it is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- (v) it has good and valid right to the Project Site, and has power and authority to grant a license in respect thereto to the Concessionaire;
- (vi) the Concessionaire shall enjoy complete and lawful access, leave and license rights in respect of the Project Site in accordance with this Concession Agreement;
- (vii) there is no litigation, claim, demand or any proceeding pending before any authority in respect of the Concessionaire's title to or possession of the land constituting the Project Site;
- (viii) all information provided by the Authority in the bid documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- (ix) it has the financial standing and capacity to perform its obligations under the Concession Agreement.

17.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (i) it is duly incorporated, organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Concession Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;



- (v) this Concession constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) all the information furnished in the Selected Bidder's Bid is, and shall be, true and correct as on the Effective Date and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of the Financial Years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the Concessionaire;
- (viii) it shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Financial Year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (ix) the execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, 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;
- (x) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's 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 or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;
- (xi) the Concessionaire has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
- (xii) the Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
- (xiii) the aggregate equity share holding of the Selected Bidder/ Consortium Members (in case of a Consortium) in the issued and paid up equity share capital of the Concessionaire are in accordance with the requirements stipulated in Article 8.2;



- (xiv) each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- (xv) all rights and interests of the Concessionaire 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 Concessionaire or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire 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;
- (xvi) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xvii) the Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Selected Bidder and Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Authority.

17.3 Obligation to Notify Change

In the event that any of the representations or warranties made/ given by the Concessionaire ceases to be true or stands changed, it shall promptly notify Authority of the same.



ARTICLE 18: VARIATIONS

18.1 Initiated by the Authority

18.1.1 Variations may be initiated by the Authority at any time during the Concession Period, either by instruction or by a request for the Concessionaire to submit a proposal. The Concessionaire shall not make any alteration or modification of the Works, unless and until Authority instructs or approves a Variation. If the Construction Documents, Works or Operation and Maintenance Procedures are not in accordance with this Concession Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.

18.1.2 If Authority requests a proposal, prior to instructing a Variation, the Concessionaire shall submit as soon as practicable:

- (i) a description of the proposed design or work to be performed and a programme for its execution;
- (ii) the Concessionaire's proposal for any necessary modifications to the Project Implementation Schedule according to Article 8.7; and
- (iii) the Concessionaire's proposal for adjustment to the Annual Concession Fee/ Concession Period, Scheduled Date of Construction Completion and/ or modifications to this Concession Agreement.

18.1.3 The Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments. If Authority instructs or approves a Variation, it shall proceed in accordance with Article 7.2 to agree or determine adjustments to the Annual Concession Fee/ Concession Period.

18.2 Initiated by Concessionaire

18.2.1 The Concessionaire may, at any time during the Concession Period, initiate a Variation, by submitting to Authority a written proposal which in the Concessionaire's opinion will reduce the cost of construction, maintaining or operating the Works, or improve the efficiency or value to the Authority of the completed Works, or otherwise be of benefit to the Authority or to rectify a divergence between any law or directive and the Technical Requirements. Any such proposal shall be prepared at the cost of the Concessionaire and shall include the items listed in Article 18.1.2.

18.2.2 Authority shall, as soon as practicable after receipts of such proposals respond with approval, rejection or comments. If Authority approves a Variation, it shall proceed in accordance with Article 7.2 to agree or determine adjustments of the Annual Concession Fee/ Concession Period.



ARTICLE 19: FINANCIAL CLOSE

19.1 Financial Close

- 19.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve the Financial Close within 180 (One Hundred Eighty) days from the Effective Date and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Construction Performance Security for each day of delay; provided that the damages specified herein shall be payable every week in advance and the period beyond the said 180 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Article 4 or due to Force Majeure.
- 19.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders. The Concessionaire shall also deliver to the Authority 3 (three) true copies of the Financing Agreements, duly attested by a Director of the Concessionaire.

19.2 Termination due to failure to achieve Financial Close

- 19.2.1 Notwithstanding anything to the contrary contained in this Concession Agreement, but subject to Article 26, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 19.1.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Concession Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement by the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Article 19.2.1 shall not apply.
- 19.2.2 Upon termination under Article 19.2.1, the Authority shall be entitled to encash the Construction Performance Security and appropriate the Proceeds thereof as Damages.



ARTICLE 20: ACCOUNTS AND AUDIT

- 20.1 The Concessionaire after due consultation with the Authority and Senior Lenders shall appoint a firm of chartered accountants out of a mutually agreed list of 10 (ten) Independent and reputable firms of Chartered Accountants in India/ Himachal Pradesh as the Statutory Auditor to audit the accounts of the Concessionaire for the Project on a yearly basis. All fees and expenses of the Statutory Auditors will be borne by Concessionaire. The Parties agree that the Statutory Auditor so appointed shall have the status of an expert whose reports and decisions shall be final and binding on the Parties, save in the case of manifest error or fraud. The Concessionaire shall extend full co-operation to the Statutory Auditor. All contracts, books, records, documents and vouchers relating to the construction, operation and maintenance of the Complex shall be open to inspection by such Statutory Auditor, who may make such copies thereof or extracts there from as it may deem appropriate. Any information secured as a consequence of such examination shall be kept confidential by all concerned.
- 20.2 The Concessionaire may terminate the appointment of its statutory auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement of statutory auditors being appointed from the panel of Chartered Accounts.
- 20.3 The Authority shall have right at all times, during the period of this Agreement to inspect the books of accounts and other relevant records of the Concessionaire in respect of the Project Facility. The Authority may for this purpose, have the inspection done through the Monitoring Committee or by a person or persons in its employment or by an Independent Auditor appointed by the Authority especially for this purpose. The Authority shall, however, give to the Concessionaire, a prior written notice period of not less than 14 (fourteen) days before the date of commencement of any such inspection.
- 20.4 The Concessionaire 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 the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain.
- 20.5 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Gross Receipts, including User Charges charged, accrued and received and other revenues derived from the Project and (b) such other information as the Authority may reasonably require.



ARTICLE 21: FORCE MAJEURE

21.1 Force Majeure Event

21.1.1 In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described in Articles 21.2, 21.3 and 21.4 respectively hereinafter which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Concession Agreement and which act or event:-

- (i) Is beyond the reasonable control of and not arising out of the fault or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder;
- (ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care and
- (iii) Has a Materially Adverse Effect on the Project

21.2 Non-Political Force Majeure Events

21.2.1 For the purposes of Article 21.1, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- (i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external to the Project Site or not designed for in construction Works);
- (ii) Radioactive contamination or ionising radiation;
- (iii) Strikes or boycotts (other than those involving the Concessionaire, Contractors, or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 21.3;
- (iv) Notified or declared as a pandemic or epidemic by the Government of Himachal Pradesh or Government of India which leads to any lockdowns or suspension of all business or construction activities at and/ or disruption of supply chains to the Project Facility;
- (v) Any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (vi) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Authority; or



- (vii) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

21.3 Indirect Political Force Majeure Event

21.3.1 For the purposes of Article 21.1, Indirect Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoHP, GoI or any other Competent Authority:

- (i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7 (seven) days and exceeding an aggregate period of 30 (thirty) days in an Accounting Year;
- (ii) Industry wide or state wide or India wide strikes or industrial action which prevent collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7(seven) days and exceeding an aggregate period of 30 (thirty) days in an Accounting Year; or
- (iii) Any public agitation which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous of 7 (seven) days and exceeding an aggregate period of 30 (thirty) days in an Accounting Year.

21.4 Political Force Majeure Event

21.4.1 For the purposes of Article 21.1, Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoHP, GoI or any other Competent Authority:

- (i) Expropriation or compulsory confiscation, by any Competent Authority of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (ii) Any unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent, the obtaining of which is a condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits.

21.5 Exceptions Applicable to the Concessionaire

21.5.1 The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement other than the circumstances resulting from an event of Force Majeure:-

- (i) Delay in performance by the Concessionaire, Contractor(s), sub-licensee, agents and employees of the Concessionaire; or



- (ii) Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facility.

21.6 Exceptions Applicable to the Authority

21.6.1 The Authority shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement:

- (i) the expropriation, confiscation, nationalisation or requisition of the Project, Project Assets or the Complex by GoHP or the Authority;
- (ii) the imposition of any blockade, embargo, import restrictions, rationing or allocation by the Authority or any Competent Authority; or
- (iii) any delay or difficulty in handing over Encumbrance free Project Site as a result of any intervention or directive of GoHP or Authority or any Competent Authority.

21.7 Effect of Force Majeure before the issue of Notice to Commence

21.7.1 Upon occurrence of any Force Majeure Event prior to the issuance of the Notice to Commence, the following shall apply:

- (i) There shall be no Termination except as provided in Article 21.10.
- (ii) The Compliance Date shall be extended by the period of which such Force Majeure event shall subsist and
- (iii) The Parties shall bear their respective costs arising out of such Force Majeure Event.

21.8 Effect of Force Majeure after Compliance Date

21.8.1 Upon occurrence of any Force Majeure Event after the Compliance Date, the following shall apply:

- (i) There shall be no Termination of this Concession Agreement except as provided in Article 21.10.
- (ii) Where the Force Majeure Event occurs before the issue of Construction Completion Certificate or Provisional Certificate, the dates set forth in the Project Implementation Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (iii) Where the Force Majeure Event occurs after the issuance of Construction Completion Certificate or Provisional Certificate, the Concessionaire shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect User Charges during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof; and
- (iv) All cost arising out or concerning such Force Majeure Event shall be borne in accordance with provisions of Article 21.9.



21.9 Allocation of costs during the subsistence of Force Majeure

21.9.1 Upon occurrence of a Force Majeure Event after Compliance Date, the cost arising out of such event shall be allocated as follows:

- (i) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
- (ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the Force Majeure Costs) shall be borne by the Concessionaire to the extent of Insurance Cover, and to the extent Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by the Authority to the Concessionaire within 120 (one hundred and twenty) days from the date of receipt of Concessionaire's claim therefore;
- (iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and duly certified by the Statutory Auditors shall be reimbursed by the Authority to the Concessionaire in one lump sum not later than 120 (one hundred and twenty) days after the end of the Force Majeure Event and receipt of notice by the Authority to that effect.

For avoidance of doubt, "Force Majeure Cost" shall not include loss of fee revenues or any debt repayment obligations but shall include interest payments on such debt, O & M expenses/ increase in cost of construction works on account of inflation and all other costs directly attributable to the Force Majeure event.

21.10 Termination Notice

If the Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Concession Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save and except as per the provisions of in Article 21.11.

21.11 Termination Payments for Force Majeure Events

21.11.1 Upon Termination of this Concession Agreement pursuant to Article 21.10, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (i) If the Termination is on account of Non Political Event, the Concessionaire shall be entitled to receive from the Authority by way of Termination Payment a sum equal to lowest of the following (a) or (b):
 - (a) 90% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire 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 Concessionaire.

or



- (b) 90% of debt due less pending insurance claims
- (ii) If the Termination of this Concession is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Authority by the way of Termination Payment a sum equal to lowest of the following (a) or (b):
 - (a) 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire 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 Concessionaire.
 - or
 - (b) 100% of debt due less pending insurance claims
- (iii) If the Termination of this Concession is on account of a Political Event, the Concessionaire shall be entitled to receive from the Authority by the way of Termination Payment a sum equal to lowest of the following (a) or (b):
 - (a) 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire 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 Concessionaire.
 - or
 - (b) 100% of debt due less pending insurance claims.

21.12 Termination Payments

The Termination Payments pursuant to the Article 21.11 shall become due and payable to the Concessionaire by the Authority upon actual or constructive transfer of the Project Assets by the Concessionaire to the Authority free from all Encumbrances, charges and liens whatsoever, unless expressly directed by the Authority otherwise.

21.13 Mode of Payments

Payments of compensation and costs by the Authority pursuant to this Article 21 shall constitute valid discharge of the Authority's obligations for Termination Payments hereunder.

21.14 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 under Article 30, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

21.15 Liability for other losses, damages etc.

Save and except as expressly provided in this Article neither party hereto shall be liable in any manner whatsoever to other Party in respect of any loss, damage, cost, expense, claims, demand



and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article.

21.16 Duty to Report

21.16.1 The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (i) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing 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 the probable Material Adverse Affect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession Agreement.
- (ii) Any notice pursuant to this Article 21.16 shall include full particulars of :
 - (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
 - (b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession Agreement;
 - (c) The measure which the Affected Party is taking or proposes to take to alleviate the impact of such Force Majeure Event; and
 - (d) Any other information relevant to the Affected Party's Claim.
- (iii) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 21.16, and such other information as the other Party may reasonably request the Affected Party to provide.

21.17 Excuse from performance of obligations

21.17.1 If the Affected Party is wholly or partially unable to perform its obligations under this Concession Agreement because of 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:

- (i) The suspension of performance shall be no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (ii) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (iii) When the Affected Party is able to resume performance of its obligations under this Concession, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.



ARTICLE 22: TERMINATION FOR DEFAULT

22.1 The Authority Events of Default

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

- (i) The Authority is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a Cure Period of 60 days from the date of Default Notice.
- (ii) The Authority is in breach of any representation or warranty made under this Concession Agreement or it repudiates this Concession Agreement.
- (iii) GoHP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Authority has failed to compensate the Concessionaire for the same through an adjustment to the Annual Concession Fee/ Concession Period.
- (iv) Any defect in the title, ownership and possession of the Authority with respect to the Project Site.

22.2 Termination by Concessionaire

Without prejudice to any right or remedy, which the Concessionaire may have under this Concession Agreement, upon occurrence of a Authority Event of Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to issue a Termination Notice to the Authority. The Termination Notice shall grant the Authority a further period of 30 (thirty) days (the “**Termination Period**”) to make a representation and if, during the Termination Period the Authority takes suitable steps to remedy the situation, the Concessionaire shall be entitled to withdraw the Termination Notice. If the Termination Notice is not withdrawn within the Termination Period, this Concession Agreement will automatically terminate on the expiry of the Termination Period.

22.3 Concessionaire Event of Default

22.3.1 In addition to the events or circumstances specified elsewhere in the Agreement, 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 Concession Agreement as Event of Default of the Concessionaire (“**Concessionaire Events of Default**”):

- (i) The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Authority or the Project;



- (ii) The Concessionaire is in breach of any representation or warranty made under this Concession Agreement or it repudiates this Concession Agreement;
- (iii) The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Concession Agreement;
- (iv) The Concessionaire abandons the Project or any of its material obligations as provided under this Concession Agreement;
- (v) The Concessionaire not issuing, renewing, replacing or providing the Performance Security in accordance with the terms of this Concession Agreement;
- (vi) The Concessionaire fails to pay balance Project Development Fee and/ or Upfront Premium and/ or Annual Concession Fee, as applicable, in the manner as specified;
- (vii) The Concessionaire does not comply with its Minimum Equity Requirements under Article 8.2;
- (viii) The Concessionaire fails to achieve Financial Close within the stipulated time period of 180 days from the Effective Date, unless expressly extended by the Authority;
- (ix) The Concessionaire has defaulted on its obligations to the Senior Lender under the Financing Documents;
- (x) The Concessionaire creates any Encumbrances, charges or lien over the Project Site or the Project in favour of any Lenders or Person, save and except as otherwise expressly permitted in this Concession Agreement;
- (xi) The Concessionaire fails to complete the construction of structural framework and exteriors/ façade of the Commercial Area within the Construction Period;
- (xii) The Concessionaire has committed an Escrow Default and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (xiii) Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement;
- (xiv) In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- (xv) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- (xvi) The Concessionaire fails to comply with the provisions laid down in Article 8.1(xiv) to 8.1(xxi);



- (xvii) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Concession Agreement and Project Agreements, and provided that:
- (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Concession Agreement and Project Agreements;
 - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Concession Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date and
 - (c) All the Project Agreements remain in full force and effect;
- (xviii) The Concessionaire commences operation of Commercial Area before operationalizing the Car Parking component of the Project or commences collection of Parking Fees before issuance of Construction Completion Certificate;
- (xix) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.

22.4 Termination by Authority

22.4.1 Without prejudice to any other right or remedies which the Authority may have under this Concession Agreement, upon occurrence of a Concessionaire Event of Default, the Authority subject to the provisions of the Substitution Agreement shall be entitled to terminate this Concession Agreement by issuing a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the “Termination Period”) to make a representation and if during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Authority shall be entitled to withdraw the Termination Notice.

22.4.2 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 22.4.1 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

- (i) Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured



within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire;

- (ii) Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

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ARTICLE 23: CONSEQUENCES OF TERMINATION

23.1 Termination Payment for Termination by Concessionaire

23.1.1 Upon Termination by the Concessionaire on account of the Authority Event of Default under Articles 22.1 and 22.2, the Concessionaire shall be entitled to receive from the Authority by the way of Termination Payment a sum 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 Concessionaire 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 Concessionaire

or

- (ii) 100% of debt due less pending insurance claims

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

23.1.2 All payments due to the Concessionaire as calculated under Article 23.1.1 shall be made within 30 (thirty) days of termination of the Concession Agreement.

23.2 Termination Payment for Termination by Authority

23.2.1 Upon Termination by the Authority on account of the Concessionaire Event of Default, the Concessionaire shall not be entitled to receive any Termination Payment during Construction Period. However, during the Operation & Maintenance Period, the Concessionaire shall be entitled to receive from the Authority by the way of Termination Payment a sum equal to the lowest of the following (i) or (ii):

- (i) 75% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire 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 Concessionaire

or

- (ii) 75% of debt due less pending insurance claims

In addition to the above stated, the Authority shall also forfeit the Performance Security.

23.3 Other rights and obligations upon Termination

23.3.1 Upon Termination of this Concession Agreement, the Authority shall:

- (i) Take possession and control of the Project Facility forthwith;
- (ii) Take possession and control of all Plant and Machinery, Materials, stores, implements, construction plants and equipment on or about the Project Site;



- (iii) Restrain the Concessionaire and any person claiming through the Concessionaire from entering upon the Project Site or any part of the Project Facility;
- (iv) Require the Concessionaire to comply with the provisions relating to Article 33; and
- (v) Succeed upon election by the Authority, without necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Third Party contractors under the Project Agreements only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed and the Concessionaire hereby acknowledges that all sums claimed by such contractors 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 Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums.

23.3.2 Upon Termination of this Concession Agreement it shall be the responsibility of the Concessionaire to do the following:-

- (i) Hand over the Project Site, Works and Project Facility to the Authority in accordance to Article 33;
- (ii) Provide all relevant data, design and drawings, records and information accedes to all reasonable requests from the Authority in connection with taking over the Project Site and/or Project Facility;
- (iii) Cease all further Works, except for such essential Works as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project;
- (iv) Hand over all the Construction Documents, Plant and Machinery and Materials;
- (v) Remove all Concessionaire's Equipment, which is on the Project Site, and repatriate all its staff and labour from the Project Site, except for such essential equipment, staff and labour as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project; and
- (vi) Co-operate with the Authority and the Nominated Company nominated by the Senior Lenders and comply with all reasonable requests thereof, including the execution of any documents and other actions, provided the Authority bears any reasonable Costs incurred by the Concessionaire relating thereto.

23.4 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 Termination Payments



and Handback requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

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ARTICLE 24: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

24.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

24.2 Authority to act on behalf of Concessionaire

24.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges and revenues under and in accordance with this Agreement.

24.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

24.3 Revocation of Suspension

24.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

24.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

24.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold the Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 24.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

24.5 Termination

24.5.1 At any time during the period of Suspension under this Article 24, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 24.4, the Authority



shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

- 24.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 24.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

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ARTICLE 25: INSURANCE REQUIREMENTS

25.1 Insurance during the Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire 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 Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

25.2 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.3 Evidence of Insurance Cover

All Insurance obtained in accordance with this Article shall be maintained with insurer(s). Within 30 (thirty) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, certified copies of certificate of Insurance and certified copies of the premia payment receipts in respect of such Insurances. The Concessionaire shall, from time to time, furnish the evidence to the Authority that all premiums have been paid and that the relevant policies remain in existence. Such Insurance may not be cancelled or materially changed without 30 (thirty) days' prior written notice to the Authority.

25.4 Remedy or Failure to Insure

If the Concessionaire fails to effect and keep in force any of the Insurances required under this Concession Agreement or fails to provide satisfactory evidence, policies and receipts in accordance with this Article, the Authority may, without prejudice to any other right or remedy, effect Insurance for the coverage relevant to such default and pay the premiums due. Such payments shall be recoverable from the Concessionaire by the Authority and may be deducted by the Authority from any monies due, or to become due, to the Concessionaire or from the Performance Security.

25.5 Waiver of Subrogation

All policies of Insurance required to be maintained by Concessionaire shall provide for waivers of subrogation (or the equivalent thereof) in favour of the Authority and its respective officers



and employees, and in favour of such other Persons as may be reasonably required by the Authority.

25.6 Concessionaire's Waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter-alia, the Authority and its employees, successors, permitted assignees, insurers and underwriters, which the Concessionaire may otherwise have acquired or in any way connected with any loss, liability or obligation covered by policies of Insurance maintained or required to be maintained by the Concessionaire pursuant to this Concession Agreement (other than Third Party liability Insurance Policies) or because of deductible Article or due to inadequacy of the limits of any such policies of insurance.

25.7 Application of Insurance Proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire who shall, subject to its obligations under the Financing Documents, apply the proceeds in repairing, replacing and making good any loss to the Works and Facilities.



ARTICLE 26: ESCROW ACCOUNT

26.1 Escrow Account

26.1.1 The Concessionaire shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

26.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in **Schedule X**.

26.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (i) all funds constituting the Financial Package;
- (ii) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (iii) all payments by the Authority, after deduction of any outstanding payments including Upfront Premium, Annual Concession Fee, etc. :

Provided that the Senior Lenders may make direct disbursements to the civil Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

26.3 Withdrawals during Concession Period

26.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (i) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (ii) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (iii) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (iv) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (v) Upfront Premium & Annual Concession Fee due and payable to the Authority and Project Development Fee payable to HPIDB;
- (vi) monthly proportionate provision of Debt Service due in an Accounting Year;
- (vii) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (viii) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (ix) any reserve requirements set forth in the Financing Agreements; and
- (x) balance, if any, in accordance with the instructions of the Concessionaire.



26.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 26.3.1, except with the prior written approval of the Authority.

26.4 Withdrawals upon Termination

26.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (i) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (ii) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (iii) outstanding Upfront Premium, Annual Concession Fee and Project Development Fee;
- (iv) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire and any claims in connection with or arising out of Termination;
- (v) outstanding Debt Service including the balance of Debt Due;
- (vi) outstanding Subordinated Debt;
- (vii) incurred or accrued O&M Expenses;
- (viii) any other payments required to be made under this Agreement; and
- (ix) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (ix) of this Article 26.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 33.

26.4.2 The provisions of this Article 26 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 26.4.1 have been discharged.



ARTICLE 27: LIABILITY AND INDEMNITY

27.1 Indemnity

- 27.1.1 The Concessionaire shall indemnify, defend and hold harmless (the “Indemnifying Party”) the Authority (the “Indemnified Party”) during the Term of this Agreement from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it; or (iv) as provided elsewhere herein.
- 27.1.2 The Concessionaire shall be responsible for executing, performing and completing the Works in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the execution of the Works by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the Authority and its advisors in this behalf.
- 27.1.3 The Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, and consequential financial or economic loss for any reason whatsoever.
- 27.1.4 The Concessionaire shall keep the Authority indemnified during the Term of this Agreement against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Competent Authority, Government Instrumentality, NGT, Courts or Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Applicable Laws and Applicable Permits even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- 27.1.5 Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.
- 27.1.6 The provision of this Article shall survive Termination.

27.2 Limitation of Liabilities

The Concessionaire shall in no event be liable to the Authority, by way of indemnity or by reason of any breach of this Concession Agreement or in tort or otherwise, for loss of use of any part (or



all) of the Works or for loss of production, loss of profit or loss of any other contract or for any indirect special or consequential loss or damage which may be suffered by the Authority in connection with this Concession Agreement.

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ARTICLE 28: INDEPENDENT ENGINEER

28.1 Appointment

- 28.1.1 The Independent Engineer shall be either any civil engineer nominated by GoHP supported by independent quality control & monitoring individual expert or a reputed firm of engineers having adequate experience in similar projects, who shall monitor the Project for the purposes of determining and ensuring compliance with Technical Requirements, the Performance Standards and Costs of the Complex. Detailed roles and functions of Independent Engineer are mentioned in **Schedule-XIV**.
- 28.1.2 The procedure for the selection and appointment of the Independent Engineer shall be finalised by the Authority in consultation with the Concessionaire.
- 28.1.3 In the event, the Independent Engineer is not in the employment of GoHP, then the cost for the Independent Engineer will be shared equally between the Authority and the Concessionaire. Further, the cost of independent quality control & monitoring individual expert shall also be shared equally between the Authority & the Concessionaire. The Concessionaire shall submit its share of payment to the Authority and thereafter, the entire payment for the Independent Engineer/ independent quality control & monitoring individual expert shall be made by the Authority.
- 28.1.4 The Authority shall ensure that the Person appointed as Independent Engineer signs a deed of adherence to this Concession Agreement, thereby binding itself mutatis mutandis to the terms of this Concession Agreement.

28.2.1 Inspection

- 28.2.1 During the Construction Period, the Independent Engineer shall, at all reasonable times and upon reasonable notice, have access to the Project Site for the purpose of discharging its duties under this Concession Agreement.
- 28.2.2 The Independent Engineer shall undertake inspections of the Project Site, regularly and at such times as it deems appropriate, to determine the progress in the construction of the Complex and the extent of compliance with Technical Requirements/ Performance Standards stipulated for the construction of Complex and notify the Authority and the Concessionaire of any deviations there from within 7 (seven) days of such inspections.

28.3 Certificates

The Independent Engineer shall decide upon, issue and sign all certificates required at various stages of Construction Works in accordance with the provisions of this Concession Agreement.

28.4 Cost of Construction

The Independent Engineer shall undertake to determine the cost incurred by the Concessionaire on the completion of the construction of the Multi-Storey Parking-cum-Commercial Complex and also, at any other stage of the Project, if desired by any of the Parties.

28.5 Role as Expert



28.5.1 The Independent Engineer shall function in the capacity of an expert (and not as an Arbitrator). If the Authority disputes the Concessionaire's statement in connection with, or arising out of, this Concession Agreement or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of Authority, Authority shall refer such matter to the Independent Engineer. The Parties have agreed that the findings of the Independent Engineer under this Article shall be final and binding upon the Parties for all matters relating to:

- (i) Measurements;
- (ii) Technical Requirements and the interpretation thereof;
- (iii) Performance Standards and interpretation thereof; and
- (iv) Drawings and their interpretation.

28.6 Tenure

The tenure of the Independent Engineer, under this Concession Agreement, shall be from the Compliance Date to the date of issue of the Construction Completion Certificate.



ARTICLE 29: MAINTENANCE BOARD

29.1 Appointment

29.1.1 On the Commercial Operations Date, the Authority shall appoint a Maintenance Board. The Maintenance Board shall consist of representatives of the following and any other member duly nominated by the Authority:

- (i) One representative of the District Magistrate;
- (ii) Two representatives of Authority; and
- (iii) One representative of Concessionaire.

29.1.2 The representative of the Authority shall act as the Chairman of the Maintenance Board and one of the representatives of the Authority shall be the Convenor. Wherever possible, the Maintenance Board shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Authority shall have the casting vote.

29.2 Powers and Duties

29.2.1 The Maintenance Board shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development, operation and maintenance of the Project, including, (without limitation):

- (i) Compliance to the O&M Manual;
- (ii) Review the Concessionaires periodic reports;
- (iii) Review and verify the implementation of Variations;
- (iv) Approve any improvements or modifications (that are not Variations) proposed by any of the members of the Maintenance Board;
- (v) Review Performance Security requirements;
- (vi) Any other matter which it deem necessary for the development, operation or maintenance of the Project Facility/ Complex;
- (vii) Review and take actions on matters arising out of the Complaints Register;
- (viii) Impose penalties on the Concessionaire as stipulated in Article 15.2.2.

29.2.2 The Maintenance Board shall have the power to appoint Expert or Specialist Person in any area required, for the review of the operation, maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional opinion, once confirmed by the Maintenance Board, shall be binding on the Parties and the Maintenance Board.

29.2.3 The Maintenance Board shall, either through in-house capability or by appointing any Expert/ Specialist, carry out structural safety audit after every 10 (ten) years, throughout the Concession Period.



- 29.2.4 Without limitation to the generality of the foregoing Articles, the Maintenance Board shall have the power to appoint a valuer as an Expert to undertake and determine the cost of repairs required as well as for the valuation of any other Works.
- 29.2.5 The Concessionaire and the Authority shall extend full co-operation to the Maintenance Board and to any Expert appointed by the Maintenance Board. All the expenses of the Maintenance Board shall be borne by the Authority.
- 29.2.6 The Maintenance Board shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convenor and notified to all the members of the Maintenance Board at least 14 (fourteen) days before the date of the meeting.

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ARTICLE 30: DISPUTE RESOLUTION

30.1 Dispute Resolution

Any dispute, difference or controversy of whatever nature regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Concession Agreement between the Parties, and so notified by either Party to the other Party (the “**Dispute**”) shall be subject to the dispute resolution procedure set out in this Article 30. It is specially clarified here that in case of any ambiguity regarding the Works, the practices existing at the time of submission of the proposal as per Good Industry Practice would prevail.

30.2 Direct discussion between Parties

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the “**Notice of Dispute**”) sent by one Party to the other Party under Article 30.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for the conducting of negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each Party shall be represented by their representatives/officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form the starting point of discussions between the two Parties during the discussion proceedings.

30.3 Arbitration or Adjudication

30.3.1 In the event that the parties are unable to resolve the Dispute through Direct Discussion under Article 30.2, the Parties shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996 (as amended from to time). The arbitration proceedings shall be conducted by the “Secretary, Law, GoHP” as the Sole Arbitrator (“**the Sole Arbitrator**”).

30.3.2 The arbitration proceedings shall be conducted in the English language and in Shimla or Mandi.

30.3.3 The cost incurred on the process of arbitration including *inter alia* the fees of the Sole Arbitrator and the cost of the proceedings shall be borne by the Parties in equal proportions. Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 30.

30.4 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 30. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Authority or the Concessionaire.



ARTICLE 31: CHANGE IN LAW

31.1 Change in Law

31.1.1 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.

31.1.2 If the Concessionaire suffers (or will suffer) delays or incurs (or will incur) additional costs, or loss in revenue resulting from such Changes in Law, the Concessionaire shall give notice to the Authority. After receipt of such notice Authority shall proceed in accordance with Article 7.2 to agree or determine any adjustment to the Concession Period to which the Concessionaire is entitled, and shall notify the Concessionaire 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.

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

31.2 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 Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.



ARTICLE 32: CONFIDENTIALITY

Neither of the Parties shall, at any time, before the expiry or termination of this Concession Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly to carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary information of the other Party.

32.1 Exceptions to Confidentiality

32.1.1 The restrictions imposed by Article 32.1 shall not apply to the disclosure of any information:

- (i) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtained with no more than reasonable diligence from sources other than the Parties;
- (ii) which is required by law to be disclosed to any Person who is authorised by law to receive the same;
- (iii) which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a Party;
- (v) to any consultants, banks, financiers or advisers to the disclosing Party; or
- (vi) In accordance with this Concession Agreement.



ARTICLE 33: TRANSFER OF THE PROJECT FACILITY

33.1 Handback Requirements

- 33.1.1 On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/ Project Assets and the Complex/ Project Facility. The Concessionaire shall also deliver to the Authority or its nominated agency on such date such operating manuals, programs, plans, design drawings, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the Complex either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of the Project Assets and the Complex shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.
- 33.1.2 The Concessionaire shall to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Contractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract. The Concessionaire shall 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 Concessionaire in the Project Facility, including manufacturers' warranties in respect of any 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.
- 33.1.3 The Concessionaire shall, to the extent possible at the time of transfer, assign to the Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- 33.1.4 The Concessionaire shall transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws.
- 33.1.5 The transfer of immovable property comprising the Project shall be deemed to be a termination of all sub-license agreement/ arrangements in relation to the Project Site and the Complex and the right and title to all such immovable property shall automatically revert to the Authority or its nominated agency. The Concessionaire, its Contractors, agents, employees and sub-licensees shall vacate the Project Site/ Complex and Project Assets. The movable and immoveable property comprising Project Assets shall be deemed to be transferred to the Authority or its nominated agency by constructive delivery and possession.
- 33.1.6 The Concessionaire shall 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 Concessionaire in the Project Facility, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- 33.1.7 At the time of transfer, the Complex shall be in such condition as is reasonable under all the circumstances taking into account their age, the design, materials used and maintenance carried out.



- 33.1.8 Until the issuance of the Vesting Certificate, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Complex, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Concession Agreement.
- 33.1.9 The Concessionaire shall provide fair and just compensation to its employees as required under the Laws or under this Concession Agreement, and shall indemnify the Authority against any claims (if any instituted) from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.
- 33.1.10 Within 30 (thirty) days of the expiry of the Concession Period, the Concessionaire shall prepare an updated Project Asset and Project Facilities Register of all movable and immovable assets/ facilities present in the Project Facility and submit the same to the Authority. The Parties agree that the transfer of Project Facility on the Transfer Date shall also tantamount to transfer of all the items as per the Project Asset and Project Facilities Register clear and free of all Encumbrances to the Authority in good working condition taking into account their age, the design, materials used and maintenance carried out.
- 33.1.11 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire 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 Concessionaire in connection with such divestment shall be borne by the Authority.

33.2 Inspection and cure

Six months prior to the Transfer Date, the Authority shall be entitled to appoint any consulting engineer to assess the condition of the Complex and prepare a detailed inventory. Such consulting engineer shall be entitled to have free access to inspect the Complex, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Complex. Such engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the maintenance requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the maintenance requirements shall be cured by the Concessionaire at its own cost.

33.3 Cooperation and assistance on transfer of Project

- 33.3.1 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 Facility in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience.
- 33.3.2 The Parties shall provide to each other, 6 (six) 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 Facility following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its subsequent concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.



33.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Article 33.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

33.4 Vesting Certificate

Within 90 (ninety) days of completion of the transfer by the Concessionaire to the Authority of all rights, titles and interests in the Project Site, Project Assets and the Complex, the Authority shall issue a 'Vesting Certificate' to the Concessionaire substantially in the form set forth in **Schedule-XIII**. The Vesting Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the Project Site/ Complex / Project Assets by the Concessionaire and their vesting in the Authority hereto. This certificate shall be issued after the Concessionaire submits to the Authority, a request for issue of such certificate. The form shall be as approved by the Authority, and shall include a detailed condition survey of the Complex. The Performance Security furnished by the Concessionaire shall be released only after the issuance of the Vesting Certificate.



ARTICLE 34: ASSIGNMENT AND CHARGES

34.1 Restrictions on assignment and charges

34.1.1 Subject to Articles 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Article 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

34.2.1 The restraints set forth in Article 34.1 shall not apply to:

- (i) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Facilities;
- (ii) mortgages/ pledges/ hypothecation of goods/ assets other than Project Site, Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Lenders under the Financing Agreements and/ or for working capital arrangements for the Project;
- (iii) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Lenders under the Financing Agreements; and
- (iv) liens or encumbrances required by any Applicable Law.

34.3 Substitution Agreement

34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule-IX**.

34.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

34.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign any of its rights and benefits and/ or obligations under this Agreement; to an assignee who is, in the reasonable opinion of



the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

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ARTICLE 35: MISCELLANEOUS PROVISIONS

35.1 Governing Law and Jurisdiction

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

35.2 Waiver

35.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this Concession Agreement:

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

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

35.3 Exclusion of implied warranties

This Concession Agreement expressly excludes any warranty, condition or any 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.

35.4 Severability

If for any reason whatever any provision of this Concession Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Concession or otherwise.

35.5 Entire Agreement

This Concession Agreement along with the Schedules and the Annexures constitute a complete and exclusive statement of the revised terms and conditions 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.

35.6 Custody of Documents

The Construction Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this Concession Agreement, the Concessionaire shall provide four copies for the use of the Authority.

35.7 Copyright

The Concessionaire, as beneficial owner, hereby transfers to the Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Concessionaire, in relation to the Construction Documents made or to be made by or on behalf of the Concessionaire, during the Concession Period for which such copyright subsists in such works. The Authority hereby grants to the Concessionaire non-exclusive royalty-free licence to use such documents and drawings solely for the purpose of complying with its obligations under this Concession Agreement.

35.8 Use of the Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Authority to the Concessionaire shall (as between the Parties) remain the property of the Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Concession Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Concession Agreement.

35.9 Compliance with Laws and Directives

35.9.1 The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Central or State law or directive or any regulation of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the Plant and Machinery and Materials and required for completion of the Works. The Authority and the Concessionaire shall comply with all the laws as applicable.

35.9.2 In the performance of this Concession Agreement, the Concessionaire shall ascertain and comply with all relevant laws and directives. The Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Indian laws and directives.

35.9.3 The Concessionaire shall indemnify the Authority, the Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire, any Subcontractor or their respective agents or employees to comply with any law or directive applicable to the construction, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.



35.9.4 If the Concessionaire or the Authority finds any divergence between any law or directive and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with Article 14.

35.10 Joint and Several Liability

If the Concessionaire is a consortium of two or more Persons, all such Persons shall be jointly and severally liable to the Authority for the fulfilment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as "Lead Member" with authority to bind the consortium and each of its members. The composition or the constitution of the consortium shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Concession Agreement.

35.11 Notifications

35.11.1 Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.

35.11.2 All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt, or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.

35.11.3 In the case of the Concessionaire, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Authority by the Concessionaire from time to time.

Name of Concessionaire's Representative :

Address for communication :

35.11.4 In the case of the Authority, all communication shall be addressed to the **Commissioner, Municipal Corporation, Mandi.**

35.12 Language

The language of this Concession Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for construction, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

35.13 Counterparts



This Concession may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement.

IN WITNESS whereof the Parties have executed and delivered this Concession Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of

The Authority by:

_____ (Signature)
_____ (Name)
Municipal Commissioner__ (Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of

Concessionaire by:

_____ (Signature)
_____ (Name)
_____ (Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of

Selected Bidder by:

_____ (Signature)
_____ (Name)
_____ (Designation)

In the presence of

1. _____ (Signature)
_____ (Name)
_____ (Designation)

2. _____ (Signature)
_____ (Name)
_____ (Designation)

REQUEST FOR PROPOSAL

FOR

**DEVELOPMENT OF MULTI STOREY PARKING-
CUM-COMMERCIAL COMPLEX AT U-BLOCK,
MANDI, HIMACHAL PRADESH ON PPP MODE**

**VOLUME III – SCHEDULES TO DRAFT
CONCESSION AGREEMENT**





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SCHEDULE-I

DEVELOPMENTS ENVISAGED

(See Article 2)

The Concessionaire shall be required to develop the following at the “**Project Site**” and hereinafter be called as “**the Project**”:-

- **A conventional ramp based Parking at the Complex**
- **Value Added Services like locker facility, valet service etc. related to Parking component of the Complex. (Optional)**
- **Commercial Area (Optional)**
 - Multiplex
 - Food Courts
 - Hotel, Restaurants
 - Hypermarket
 - Retail Showrooms for Consumer goods / Garments / Electronics, etc.
 - Bank and/ or Bank’s ATMs
 - Office spaces for Commercial Organizations etc.
 - Institutional Use

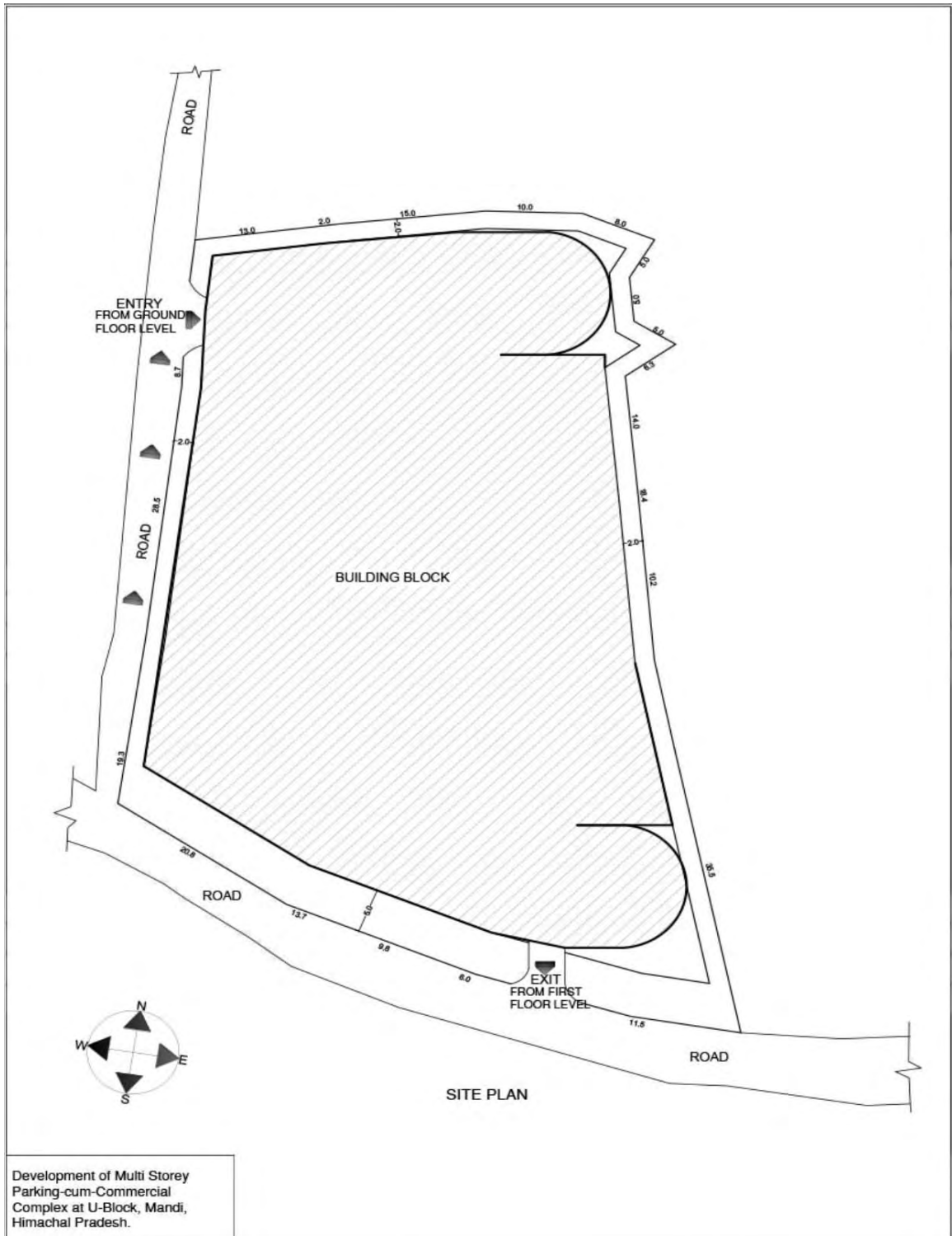
The Concessionaire shall ensure that the minimum Car Spaces within the Project Facility shall at no time be less than 500 in number for public use and additional 100 in number for visitors to the commercial facility with each car parking space equal to ECS 28 sq. mtrs.

- The area available for the development of Commercial Area will be restricted to FAR approved by the Govt. of Himachal Pradesh which as on the date of publication of RFP is 1.5.

It is being clarified here that the Concessionaire shall have the right to charge Parking Fees from all the Vehicles as per the rates notified by the Authority from time to time in line with Schedule VIII. Also, the Concessionaire shall ensure that all the vehicles are parked in the Parking area at the Complex.



SCHEDULE-II
(See Article 6)
PROJECT SITE PLAN





SCHEDULE-III
(See Article 2)
**SCOPE OF WORK, TECHNICAL REQUIREMENTS &
PERFORMANCE STANDARDS**

1. Broad Scope of Work

The scope of work includes but not limited to:

- (i) Taking over of the clear and encumbrance free site to Plan, Design, Finance and establish the facility, including Construction, Marketing, provision of relevant assets, equipment, faculty, Clearances/approvals, ancillary services and amenities related to the Parking component at the Complex and Commercial Area conforming to Building Bye-Laws and regulations and as per terms of the Agreement and Schedules hereof.
- (ii) Site clearance and cordoning off the site; providing and deputing of Security including dismantling of incorrect work, removal of debris to specified debris disposal sites (shall be property of Concessionaire) etc.
- (iii) Construction of the Complex as per the design approved by the Design Approval Committee and in conformity to the standards set forth in this schedule including, providing installation of all internal and external services.
- (iv) Provisioning of utilities, Project Facilities, equipments, etc. for the implementation of Project during the Concession Period.
- (v) Operate, maintain and manage the Parking component at the Complex facility by providing the Car Parking Service for designated hours or 24 hours a day 365/366 days per year.
- (vi) Meet the requirements laid down by the Competent Authorities.
- (vii) Provide Value Added Services –Locker Facility, Valet Service, Driver’s Rest room, public conveniences etc.
- (viii) Entry and exits for the Parking at the Complex shall be provided and developed considering proper overall Traffic Circulation within the complex and on roads outside the complex.
- (ix) Provision of sufficient number of stairs and lifts in the parking area as well as commercial area at the Complex for smooth and vertical movement of users.
- (x) Performance and fulfillment of all obligations of the concessionaire in accordance with the provisions of the Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under the Agreement.
- (xi) All the open spaces in and around the Complex shall be landscaped.

2. SPECIFICATIONS FOR DESIGN, ENGINEERING AND CONSTRUCTION

2.1 MINIMUM BUILDING SPECIFICATIONS

- (a) In case ground water is encountered, the lower most floor(s) shall be protected with tanking form of water proofing system.
- (b) Adequate surface drainage arrangement shall be made so that surface water does not enter into the Parking area at the Complex.



- (c) Plinth height of the building shall be as approved by the MC/ TCP Department
- (d) The building shall be designed for appropriate seismic load, all dead and live loads wind pressures etc. In all cases, normal strengthening to resist distress during earthquakes.
- (e) The construction of building shall be governed by the building rules provided in the Himachal Pradesh Town and Country Planning Rules, and local building bye laws of M.C. Mandi. On the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards shall be followed.

2.2 MINIMUM CONSTRUCTION SPECIFICATIONS: AS APPLICABLE

- (a) The structure shall be an RCC column-and-beam structure/ Steel Structures, with a brickwork fascia, so as to enable it to blend in with the adjoining buildings.
- (b) The walls shall have 1:4 plastering, and the ceilings shall have 1:3 plastering
- (c) Doors and windows shall have aluminum / glazing.
- (d) Bay marking shall be done with thermo-plastic paint.
- (e) Flooring (where applicable) shall be of Minimum M-20 concrete grade, with a 6 mm ironite / hardener – reinforced-concrete top layer. Flooring for Toilets, office spaces and other public areas shall be of granite / ceramic tiles.
- (f) Only quality concrete shall be used.
- (g) Internal building shall be plastered and painted.
- (h) Access to lower ground floors shall be separate from the main and alternative stair case providing access and exit from higher floors. Where the staircase is continuous in the case of buildings served by more than one staircase, the same shall be enclosed type serving as a fire separating from the basement floor and higher floors.
- (i) All parking areas shall be paved to withstand vehicle loads and forces due to frequent acceleration and de-acceleration of vehicles.
- (j) The construction of building shall be governed by the building rules provided in the Himachal Pradesh Town and Country Planning Rules, and local building bye laws of M.C. Mandi. On the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards shall be followed. All construction shall be strictly as per the provisions made in IS Specifications and standards, CPWD/PWD specifications etc.

2.3 DESIGN, LOADS AND MATERIAL

All buildings shall be planned and designed as Reinforced Cement Concrete frame structures/Steel Structure with suitable located shear wall in case of high rise towers conforming to requirement of below noted Indian Standards and providing the areas and spaces as detailed in the Agreement to make the buildings structurally stable, durable and fully functional:

- (a) I.S. 456-2000 Code of Practice – Plain and Reinforced Concrete
- (b) I.S.1893 (Part 1) -2002 Criteria for Earthquake Resistant Design of Structures
- (c) I.S. 4326-1993 Code of Practice- Earthquake Resistant Design and Construction of Buildings



- (d) I.S. 13920- 1993 Code of Practice- Ductile Detailing of Reinforced Concrete Structures subjected to Seismic Forces
- (e) I.S.875 (Part 3)- 1987 Code of Practice for Design Loads (other than Earthquake) for Buildings and Structures
- (f) I.S.875 (Part 2)-1988 Code of Practice for Design Loads (other than earthquake) for Buildings and Structures: Part 2 Imposed Loads.

Where required for stability against lateral forces shear walls shall be provided suitably located in case of high-rise structure.

Design, Loads and Material for Steel Structures

The Design of steel structures in general shall be according to IS: 800. The structures shall be designed for adequate rigidity and stability in all directions.

The loading will conform to the standards as follows:

- Dead load at actual for all permanent structures : IS 875 (Part 1)
- Live load : IS 875 (All 5 Parts)
- Seismic load : IS 1893
- Floor load (unless required higher otherwise) : 200 kg/m²
- Staircase load : 400 kg/m²
- Floor load for car parking areas : 400 kg/m² (or at actual with safety factor, whichever is higher)

The materials used will conform to the standards as follows

- Rolled steel sections : IS 2062 Fe 410W
A
- Plates up to 20 mm thickness : IS 2062 Fe 410W
B
- Sections & plates – medium or high tensile steel : IS 8500
- Circular steel tubes : IS 1161 Yst 240
- Rectangular or sq. hollow steel sections : IS 4923 Yst 240

Foundations

The design of foundations shall be based on safe bearing capacity of soil at the founding level as determined by the Geotechnical Investigations at site and as approved by the Independent Engineer. The foundations shall be designed as per relevant Indian Standards as dictated by the Total dead and imposed loads, lateral loads (seismic / wind loads), safe bearing capacity of soil and founding level. The foundation system may include:

- a. Spread Foundations in reinforced cement concrete duly tied together with tie beams.
- b. Pile Foundations- Under reamed piles, Bored cast-in-situ piles, driven cast-in-situ piles, driven pre-cast piles in concrete.
- c. Raft / Strip/ Combined Foundations in reinforced cement concrete.

Where necessary and as dictated by soil conditions ground improvement measures shall be undertaken by the Concessionaire at its cost in consultation with the Independent Engineer.

2.4 MINIMUM AMENITIES REQUIREMENT

- (a) Concessionaire shall provide a Driver Waiting Room. The waiting room shall be provided with adequate seating arrangement; the attached toilet, urinals and wash basins; and Public Address System.



- (b) Concessionaire shall provide a Cloak Room to store Users belongings. The Concessionaire may charge user fee for such services.
- (c) Concessionaire shall provide a towing vehicle for towing away of breakdown vehicles or wrongly parked vehicles providing hindrance to circulation routes.
- (d) Concessionaire shall make provision for separate public convenience for men and women and drinking water fountains in the facility on each floor at appropriate location easily accessible to users including disable persons.
- (e) The concessionaire shall make a provision of administrative office for its use during concession period.

2.5 ELEVATORS

- (a) The Car Parking and Commercial Area at the Complex shall be provided with elevator or lift arrangement for the convenience of users. The lift should have adequate capacity and shall be wide enough to accommodate wheel chair access.

2.6 SIGNAGE

- (a) Concessionaire shall ensure all parking rates and regulations, including the policy for lost tickets, shall be displayed at every entrance to the Car Park and at each payment station.
- (b) Concessionaire shall also display the entry, exit including emergency exit related information and contact numbers of nearest Hospital, Ambulance Service, Police station, Fire Station, etc.

2.7 LIGHTING

- (a) Lighting shall be designed to provide adequate vision, comfort and safety. It shall be designed to provide for uniform lighting throughout the facility with no dark patches or pockets during day as well as night time.

2.8 VENTILATION

- (a) All Parking Areas shall be provided with mechanical ventilation system to ensure provision of positive and uniform supply of fresh air in the parking as well as commercial areas.

2.9 UTILITIES

- (a) Standby DG Set of adequate capacity shall be provided to meet the emergency load requirements or for backup during power outages along with the secondary backup for the minimum operation (viz. Lift(s) in the Car Parking and the Commercial Area at the Complex. The power backups shall cater to the requirements of emergency lights for staircases, parking bays, lifts, firefighting, water supply and ventilation.
- (b) Adequate underground/overhead water storage shall be provided to cater requirement of domestic flushing and firefighting purpose. The design and detailed for the provision of plumbing and sanitary facilities shall be in accordance with National Building Code.
- (c) The Concessionaire shall ensure the provision of proper fire safety measure conforming to the provisions of National Building Code (Part IV: Fire Protection) to the satisfaction of the Chief Fire Officer, Mandi/competent Authority.



- (d) No down pipes, waste pipes, air coolers, air conditioners etc. shall be exposed to public view on any face of the building but shall suitably be encased. No chimney shaft or AC Duct etc. shall be exposed on the face of the building.
- (e) A rooftop rain water harvesting system shall be provided.

2.10 PRE COMMISSIONING PHASE

During the design, construction and erection phase, the Concessionaire shall:

Prepare the detailed engineering including detailed design, drawings, and architectural plan and obtain requisite approvals from Competent Authorities. Concessionaire shall prepare the detailed design for separate entry and exit points for the Parking area at the Complex and will obtain requisite approvals from competent Authority.

- (a) The design and engineering shall conform to the development guidelines and the technical requirement provided in the RFP document.
- (b) Design, Construction, commissioning and testing to be undertaken by concessionaire. Overall designs material specifications and workmanship would be the Concessionaire's responsibility.
- (c) Concessionaire shall install commission and test various equipments, hardware and software systems such as the computer aided access control system, billing system, facility management system etc.

2.11 EQUIPMENT AND MATERIALS

- (a) The Concessionaire shall provide all equipment and material necessary to provide the services.
- (b) The Concessionaire shall maintain an adequate inventory of consumables and spare parts and undertake periodic preventive maintenance as required for the relevant equipment and materials. The Concessionaire shall ensure continuous workflow as required. The Concessionaire shall maintain regular and systematic records of all maintenance and operations activity at the Facilities.
- (c) The installed plant and equipment shall be inspected, checked and tested to verify that it is correct, complies with specification and has been installed in accordance with designed drawings and / or manufacture's recommendations, by the Concessionaire.

2.12 CONSTRUCTION

CONSTRUCTION QUALITY ASSURANCE

- (a) Concessionaire shall develop Construction Quality Assurance (CQA) Programme, which must ensure that the constructed units meets or exceeds all design criteria specified.
- (b) CQA Programme must include observations, inspections, tests and measurements, sufficient to ensure:
 - i. Structural stability and integrity of all components
 - ii. Proper construction of all components according to the specifications prescribed by Competent Authorities, the technical specifications provided and good engineering practices, and proper installation of all components according to design specifications



- iii. Conformity of all materials used with design and other material specifications.

2.13 ENVIRONMENT MANAGEMENT PLAN

Concessionaire should ensure that:

- i. Surplus muck generated from excavation and debris generated from demolition of existing structures should be disposed off at appropriate dumping site specified by MC.
- ii. Fencing, barriers and signage will be placed around the perimeter of the site.
- iii. Dust suppression measures will be implemented by the use of suitable screens, water to damp down during construction.
- iv. Proper stacking area for building construction material should be planned within site. No construction material should be stacked on roads or other adjoining properties.
- v. Proper health & sanitary arrangements for workers. In respect of all labour directly or indirectly employed at the works for the performance of contractors, who are part of this agreement, the contractor shall comply with or cause to be complied with all the rules framed by GoHP/GoI from time to time for the protection of health and sanitary arrangements for workers.

3. PERFORMANCE SPECIFICATIONS FOR OPERATION, MAINTENANCE AND MANAGEMENT PHASE

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

3.1 OPERATION AND MAINTENANCE MANUAL

- (a) The Concessionaire shall in consultation with “Authority” and/or Independent Engineer evolve an Operation and Maintenance Manual.
- (b) The Concessionaire 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.
- (c) The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the facility during the Operations Period, so that facility is maintained in a manner that at all times it complies with the specifications and standards and at the time of divestment of rights and interest by the concessionaire in terms of the Concession Agreement in sound, durable and functional condition.

3.2 PARKING AREAS AND PARKING FEE COLLECTION

- (a) Parking Service shall provide maintain, operate and replace when necessary, access and egress equipment, mechanical or otherwise to ensure parking areas are used by the bonafide visitors.
- (b) Concessionaire shall ensure the access/egress control mechanisms are of suitable design for use by disable drivers as well.
- (c) Parking fee collection system should be able to provide for vehicle identification based on type of vehicle and duration of stay. Daily backup/record of the parking fee collection shall be maintained.
- (d) The parking ticket shall bear the vehicle number, type of vehicle and entry and exit time of the vehicle.



3.3 TRAFFIC MANAGEMENT

Concessionaire shall keep all entrances, exits of the facility clear from vehicular and other obstructions thus maintaining free flow of traffic at all times.

3.4 CAR PARKING MAINTENANCE

- (a) Concessionaire shall undertake routine, periodic and preventive maintenance activities of the Project Facility including civil, electrical and mechanical works for meeting the performance standards.
- (b) Maintain all Parking Areas such that they are kept clean, free from litter and debris. The dustbins shall be provided at appropriate places in the facility
- (c) Shall regularly inspect the fabric and fittings of the Parking Areas and immediately repair any damage. Such damage may include but not limited to:
 - Damaged structures
 - Damaged car parking and road surface
 - Curbing footpaths
 - Inadequate car parking lighting
 - Road or space definition markings
 - Inadequate or damaged signage

3.5 EQUIPMENT MAINTENANCE

- (a) Concessionaire shall implement and maintain an auditable Asset Management System (AMS) for all equipment devices installed within the Facility. AMC shall have the following minimum information as well as some basic information on each device (marked by *):
 - i. Name of equipment (*)
 - ii. Name and contact No. of Manufacturer and/or Supplier (*)
 - iii. Serial No and other unique identifier (*)
 - iv. Warranty and/or guarantee information
 - v. Acquisition Date (*)
 - vi. Cost of Equipment
 - vii. Installation date (*)
 - viii. Life of Equipment/Replacement date/Next date of service (*)
 - ix. Recommended Replacement Date
 - x. Depreciation per year
 - xi. Servicing and/or calibration requirements and timetable
 - xii. Associated hazards and safety bulletins and notices
 - xiii. Current location
 - xiv. Current condition
 - xv. Repair and Maintenance History
- (b) Concessionaire shall undertake planned and reactive maintenance of equipment to ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

3.6 STAFFING AND PERSONNEL TRAINING

- (a) Concessionaire shall make provision of adequate staff required for construction, operation, maintenance and management of facility as prescribed in the staffing plan.
- (b) Concessionaire shall ensure that all staff engaged in the delivery of the Services is all times properly adequately notified, trained, and instructed and information records are maintained accordingly.



- (c) Concessionaire shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears and wear identification badges at all times while working in the facility.

3.7 SECURITY

- (a) Concessionaire shall take all reasonable precautions to minimize theft, injury to visitors or their property within confines of the Parking Area.
- (b) Concessionaire shall make a provision of adequate security to prevent any theft and provide a 24-hour surveillance system which continuously monitors and controls entry into and exit from the facility. A closed circuit television (CCTV) network shall be provided for security and surveillance as well as for central monitoring purposes.
- (c) Concessionaire shall take the responsibility of the parked vehicles without any liability of the Authority against the damage of the parked vehicles. The Authority shall be indemnified by the Concessionaire for any claim that may be brought against the Authority in this regard.

3.8 PREPAREDNESS AND PREVENTION

- (a) The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Complex. Concessionaire shall ensure that facility is operated and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. Concessionaire shall provide and maintain requisite equipment including fire-fighting and adequate water supply, internal communication system and alarms, minimum aisle space, and provisions for contacting local authorities.
- (b) Concessionaire shall prepare and maintain emergency preparedness plan for facility and train all the personnel working in the facility in order to respond appropriately in such situation and carry out these plans in the event of an actual emergency.
- (c) The emergency plan should describes arrangements with local authorities and lists names, addresses, and telephone numbers of all people qualified to act as emergency coordinators. If more than one emergency coordinator is listed, a primary contact must be designated. The plan must include a list of all emergency equipment and evacuation plans, where applicable.

3.9 RECORD KEEPING AND REPORTING

- (a) Concessionaire shall provide to the “Authority” the following reports
- Parking Fee Sales
 - Sub-License amount collection
 - Gross Revenue generated from the project
 - All incidents of crime within the parking and commercial area
 - Payment of Electricity Bills and other amenities
 - Salary and wages payments along with ESI and P.F. challans/returns as per applicable labour law
 - GST payment challans/periodic Returns
- (b) All records and plans must be kept at the facility and furnished upon request, and made available at all reasonable times for inspection by “AUTHORITY” and Competent Authority.



- (c) Compliant Register/Complaint Register shall be available at appropriate location at all the times. The compliant register shall be made available for inspection by “AUTHORITY” as and when asked for.

3.10 SERVICE LEVEL SPECIFICATIONS/PERFORMANCE STANDARDS FOR OPERATION

- (a) Parking
- (i) Concessionaire shall be required to operate the Parking component at the Complex at desired optimum level of service. The performance of the facility would be judged based on the following performance standards:
- Servicing time at lower and upper floor parking
 - Waiting queue length at entry and exit of the facility not more than 3 vehicles at given point of time.
 - The servicing time at the ticket issuing machine should not be more than 30 seconds per vehicle.
- (b) Power
- (i) Concessionaire shall be required to provide full power back-ups for the entire Complex including elevators, escalators, underground parking lots, ventilation system in the basements.
- (c) Cleanliness at Commercial Areas as well as Parking area including public utility service areas at all times.

3.11 SERVICES LEVEL SPECIFICATIONS/ PERFORMANCE STANDARDS FOR MAINTENANCE

- (a) Buildings
- (i) All elements of external and internal building fabric (Including fixtures, fittings, floor, and floor-coverings), finishes, furniture and equipment or a services system component shall be functional, operational and satisfy the performance requirement.
- (ii) Building fabric free from damp penetration, debris and moss growth.
- (iii) Free from structural cracks and / or deflection.
- (iv) Function as intended & free from all but minor surface blemishes and wear and tear, corrosion.
- (v) Floor/ floor covering is free from tears, scoring, cracks or any other damage that is unsightly and/ or could cause a health and safety hazard.
- (vi) Façade beauty is maintained by timely intervention and regular painting
- (b) Distribution System: Distribution system (including distribution equipments, protective devices, fuse switches, isolators, distribution boards, cables systems for IT, Lighting, communication, safety, alarm system)
- Ratings clearly marked,
 - Fuse elements and circuit breakers mechanism in working order,
 - Contact and connection clean and mechanically tight,
 - No overheating during normal operating loads,
 - Cable joint boxes free from compound leaks,
 - Markings and covering notices where necessary



- All electrical installations to comply with IS codes
 - Wiring, fittings, fixtures, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and label.
- (d) Water Systems: Pipe network and fittings shall be fastened securely to their intended points of anchorage and there shall be no drips and leaks of water from pipe network, taps, valves and/or fittings.
- (e) Public health and drainage system:
- Shall function as intended without due noise and vibration
 - All pipe network and fittings fastened securely to the intended points of anchorage
 - There shall be no leaks of waste and / or foul water and / or rainwater
 - Shall be provided with suitable pumping system for pumping of waste water into sewers to avoid any risk of sewerage heading back into the basement at any time.
- (f) Fire Fighting Equipment
- Fire safety systems compliant with statutory regulations and service standards at all times
 - Fire extinguisher and fire-fighting equipment shall be maintained as per IS code
 - Fully operational within manufacturer's recommendations
 - Hydrants, sprinklers and hoses shall be at correct operating pressure and capacity
 - Pipe network free from corrosion, leaks and drips
 - The maintenance and Operation Manual shall have a write up on the procedure to be followed in case of fire.
 - There has to be a description of the system used for fire-fighting and schedule of maintenance and refilling, if any.
 - There shall be drawing showing the location of the detectors and nozzles for distribution / spraying of the fire-fighting media.
- (g) Horticulture: Trees, Shrubs Hedges, Grassed areas, Flower beds trimmed, pruned and / or cut to maintain healthy growth
- (h) Site Circulation Routes including paving, paths, driveways, roads, parking area, facility entrance:
- (i) Signs and marking
- Be in appropriate locations
 - Highly visible during day and night
 - Offers clear and concise information
- (j) Gutter and Drains: Free from litter, leaves, weeds, extraneous material and bad smell
- (k) Utilities Maintenance
- i. Any disruption in power supply shall be rectified in six hours. Standby power supply shall be ready to be operated and should be



available 24 hours. Standby power source shall be operational secure and tested regularly.

- ii. Ensure utility infrastructure like water supply, drainages, communication system is maintained in fully functioning conditions
- iii. All utility licenses are current and correct for the current supply requirement.

(l) Management

- i. Management structure established and operating in accordance with proposal.;
- ii. All system and controls in place to safeguard property, cash and commodities and duly functional.;
- iii. Reports are served to the Authority in the agreed format and quality and at agreed frequency. Proposed variation in services are clearly defined in the correct manner and have received written consent from the Authority prior to their implementation.;
- iv. Compliance with statutory and prescribed standards in force.

(m) Staffing

- i. There are no reported staff shortages
- ii. All staff have been vetted and approved for work in areas as appropriate.

3.12.1 SERVICE LEVEL INDICATORS

The service level indicators to measure the effectiveness of operations and maintenance are described in the following standards:

Sl.No.	Level of Services Indicator	Response/Repair Time	Frequency of Monitoring
1	Customer Complaint	Response time within 5 days	Monthly
2	Downtime of System (entry and exit barriers, fee collection equipment, etc.)	Repair time within 6 hours except for major repairs and replacement	Monthly
3	Power Supply	Any disruption in power supply rectified in six hours. Standby power supply shall be readily available 24 hours throughout the year	Monthly
4	Drainage System	Obstruction cleared with 24 hours after detection, damages repaired within 1 week	Monthly
5	Utilities like water supply, lighting, telecommunication network, elevators	Repair within 24 hours; to be available and remain operational 24 hours a day throughout the year	Monthly
6	Potholes, cracks and rutting in pavements	Repair within 1 week after detection	Monthly
7	Cracks, spalling, scaling, blistering of plaster and damages to walls and façade including paints and finishes	Repaired within 2 weeks and painting at regular interval as mutually agreed by the Parties	Monthly



Sl.No.	Level of Services Indicator	Response/Repair Time	Frequency of Monitoring
8	Park Area and Pavement Surface	Soil debris, trash and other objects on the pavement surface shall be removed within 4 hours	Daily
9	Signages and Markings	Repair within 3 days; damages and missing signs shall be replaced within 2 week	Monthly
10	Breakdown of Vehicles in the facility	Towing of Vehicle within 30 minutes	Continuous
11	Emergency Response and fire Fighting	Repair within 24 hours	Monthly
12	Reporting to Competent Authorities on Statutory Compliance	Response time within 5 days	Monthly

3.13 KEY PERFORMANCE INDICATORS

Sl. No.	Key Indicator	Nos./Timeline
1	Queue length	3 vehicles at any given time
2	Servicing timing	30 sec per vehicle
3	No. of crime incidents per month	Nil

The Concessionaire 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 Concessionaire shall carry out combined inspections along with the Authority or its representative on regular bases as mutually agreed between the Parties. However, the Authority is free to take up additional inspection to ensure the performance standards.



SCHEDULE-IV
[See Article 8.1.4(xvii)]
VEHICLES

The following categories of vehicles shall be allowed to use the facility for vehicular parking :

1. Cars
2. Motorized two wheelers
3. Jeeps
4. SUVs
5. Commercial Taxis/ Cars

Delivery of goods by any utility vehicle only for commercial establishments can be done within the Parking area at the Complex.

Vehicles which are not to be allowed to use the Parking area at the Complex are given below:

1. Bicycles
2. Tricycle rickshaws
3. Rehras
4. Three Wheelers auto rickshaw
5. Buses, Trucks/ HMs etc.



SCHEDULE-V (A)
(See Article 5.3)
FORMAT OF CONSTRUCTION PERFORMANCE
SECURITY

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

The Commissioner, Municipal Corporation, Mandi, HIMACHAL PRADESH

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of Concession Agreement (hereinafter referred to as the “**Agreement**”) to be executed between the Commissioner, Municipal Corporation, Mandi, HIMACHAL PRADESH (“hereinafter referred to as the “**Authority**”) and _____ (hereinafter referred to as the “**Concessionaire**”) for the Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh under PPP mode on design, build, operate and transfer basis (hereinafter referred to as the “**Project**”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee, i.e. “Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the Authority and is not dependent upon execution or performance of any Agreement between the Authority and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, 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 Concessionaire, upto a total sum of Rs. ____ Lakhs (Rupees ____ Lakhs Only), such sum being payable by us to the Authority immediately upon receipt of 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 and without any cavil or argument or delaying tactics or reference by us to



Concessionaire and without any need for the AUTHORITY to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. ____ Lakhs (Rupees ____ Lakhs Only).

3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
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 shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not 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 pay to the Authority, any amount so demanded not exceeding Rs. ____Lakhs (Rupees ____ Lakhs Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, 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 a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire 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 until _____

Notwithstanding anything contained herein:

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

Authorized Signatory, for Bank



SCHEDULE-V (B)
FORMAT OF OPERATION & MAINTENANCE
PERFORMANCE SECURITY

(See Article 5.3)

PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee:

The Commissioner, Municipal Corporation, Mandi, HIMACHAL PRADESH

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Operation & Maintenance Period in respect of Concession Agreement dated..... (hereinafter referred to as the “Agreement”) between the Commissioner Municipal Corporation, Mandi, HIMACHAL PRADESH (hereinafter referred to as the “**Authority**”) and _____ (hereinafter referred to as the “**Concessionaire**”) for the Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh under PPP mode on design, build, operate and transfer basis (hereinafter referred to as the “**Project**”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee, i.e. “**Performance Security**” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the Authority and is not dependent upon execution or performance of any Agreement between the Authority and _____ (name of the Concessionaire).

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, 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 Concessionaire, upto a total sum of Rs. ____ Lakhs (Rupees ____ Lakhs Only)¹, such sum being payable by us to the Authority immediately upon receipt of 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 and without

¹ This amount should be equal to the Annual Concession Fee applicable from the 2nd year of COD and thereafter, this amount shall escalate @5% per annum over the last applicable amount of Annual Concession Fee.



- any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. ____ Lakhs (Rupees ____ Lakhs Only).
3. We hereby waive the necessity of the Authority demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
 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 shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
 5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not 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 pay to the Authority, any amount so demanded not exceeding Rs. _____ Lakhs (Rupees _____ Lakhs Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, 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 a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire 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 until _____.

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. ____ Lakhs (Rupees ____ Lakhs Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the AUTHORITY serves upon us a written claim or demand on or before _____.

Authorized Signatory for Bank



SCHEDULE-VI
VALUE OF PERFORMANCE SECURITY
(See Article 5.3)

The value of Performance Security for the various phases of the Project shall be as set out in this Schedule.

<u>Type of Security</u>	<u>Value of Security</u>	<u>Instrument</u>	<u>Duration From</u>	<u>Duration To</u>
Construction Performance Security	Rs.2,80,00,000/- (Rupees Two Crores and Eighty Lakhs only)	Bank Guarantee in the format as provided in Schedule-V (A)	Before signing of the Concession Agreement	Till 1 (one) month from the end of 1 st anniversary of the COD
O&M Performance Security	Rs. _____/- (Rupees _____ only) ²	Bank Guarantee in the format as provided in Schedule-V (B)	End of 1st (first) anniversary of the COD	Two months after the issuance of the Vesting Certificate.

The O&M Performance Security shall be enhanced every year at the same rate at which the Annual Concession Fee shall escalate in accordance with Article 5 of the Concession Agreement.

² An amount equal to the applicable rate of Annual Concession Fee in the second year after COD.



SCHEDULE-VII
(See Article 4.1(iv))
DESIGN APPROVAL COMMITTEE

For the approval of the design of the “*Parking-cum-Commercial Complex*”, Design Approval Committee shall be constituted comprising of the following:

1. The Deputy Commissioner, Mandi, HIMACHAL PRADESH
2. The Commissioner, Municipal Corporation, Mandi, H.P
3. State Town Planner, Himachal Pradesh or his representative.
4. Chief Architect, Himachal Pradesh PWD or his representative.
5. Representative of HPIDB
6. Any other members as nominated by the Commissioner, Municipal Corporation Mandi

The Deputy Commissioner, Mandi, HIMACHAL PRADESH shall act as the Chairman of the Design Approval Committee.

The Design Approval Committee shall be responsible for approving the design submitted by the Concessionaire and give suggestions, if any, for improving the design of the Multi-Storey Parking-cum-Commercial Complex at U-Block in Mandi, HIMACHAL PRADESH.



SCHEDULE – VIII
PARKING FEE RATES
(See Article 1.1(lxiv) and 3.1.2(vii))

The Concessionaire shall levy, collect, retain and appropriate the following Parking Fees from the Vehicles/ Users using Car Parking at the Complex

Duration	Amount
Parking up to two hours duration	Rs.20/-
Parking up to four hours duration	Rs.30/-
Parking up to eight hours duration	Rs.50/-
Parking up to twelve hours duration	Rs.70/-
Parking up to twenty four hours duration	Rs.120/-

However, it is being clarified here that this is the maximum amount which can be levied by the Concessionaire.

In addition to this, the Parking Fees rates are subject to increase at the rate of 10% (ten percent) after every 2 (two) years, over the previous Parking Fees rates notified by the Authority.



SCHEDULE –IX
SUBSTITUTION AGREEMENT
(See Article 34.3)

THIS SUBSTITUTION AGREEMENT is entered into on this the ***day of ***20**.

AMONGST

1. The Commissioner, Municipal Corporation Mandi, HIMACHAL PRADESH a statutory body constituted in _____ under the _____ Act, having its office at _____ (hereinafter referred to as the “**Authority**” which expression shall, unless the context otherwise requires, include its successors and assigns);
2. [*****Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at *****, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. *****[NAME AND PARTICULARS OF Lenders’ Representative] and having its registered office at *****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated ***** with the Concessionaire (the “**Concession Agreement**”) for the Development of Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, Himachal Pradesh on design, build, operate and transfer basis (DBFOT) (hereinafter called the “**Project**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:



“**Agreement**” means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956/ 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” Means the parties to this agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.



- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the



Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding



The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall - undertake Termination under and in accordance with the provisions of Article 22 and 23 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.



6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occurrence of the following events:

- (a) Termination of the Agreement; or
- (b) No sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any



claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Mandi] and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 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 [Mandi, Himachal Pradesh] shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of agreements



In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another 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 of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties 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, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and



the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES 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 CONCESSIONAIRE by:

For and on behalf of AUTHORITY OF [***] by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)



(Address)
(Fax No.)

(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

- 1.
- 2.

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SCHEDULE-X
(See Article 26.1.2)
ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this theday of20 ..

AMONGST

1.Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the **“Concessionaire”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (insert name and particular of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **“Lenders’ Representative”**, which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the **“Escrow Bank”** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. The **Commissioner**, Municipal Corporation, Mandi, HIMACHAL PRADESH having its office at] (hereinafter referred to as the **“Authority”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the **“Concession Agreement”**) for Developing a Multi-Storey Parking-cum-Commercial Complex at U-Block, Mandi, HIMACHAL PRADESH through Public Private Participation on **Design, Build, Finance, Operate and Transfer (DBFOT)** basis (the **“Project”**), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Development of Multi-Storey Parking-cum-Commercial Complex at U Block, Mandi, Himachal Pradesh on PPP basis



In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Lenders' Representative” means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out, if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession



Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Compliance Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and



at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all User Charges levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;



- (b) All User Charges collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments;

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Upfront Premium or Annual Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Construction Works Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and payout therefrom on the Payment Date(s):

- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) All payments relating to the construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (e) Upfront Premium and Annual Concession Fee due and payable to the



Authority and Project Development Fee due and payable to HPIDB;

- (f) Monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) Monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) Any reserve requirements set forth in the Financing Agreements; and
- (j) Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Upfront Premium, Annual Concession Fee and Project Development Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement and any claims in connection with or arising out of Termination;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under the Concession Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire;

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.



4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, 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.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 24 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;



- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.



7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub- Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub- Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity



- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Mandi, Himachal Pradesh and the language of arbitration shall be English.



11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another 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 of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and;
- (c) shall not affect the validity or enforceability of this Agreement in any manner.



11.5.2 Neither the failure by any 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 any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties 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, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the



foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution no.....passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of , Director, who has signed these presents in token thereof and, Company Secretary/ Authorised Officer who has countersigned the same in token thereof^e:
SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative :

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK *** by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY OF..... by:



(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of :

1.

2.

‡ To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

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HPIDB website 14-12-2020



SCHEDULE-XI
CERTIFICATE OF COMPLIANCE
(See Article 4.3.3)

Ref. No.....

Dated

To,
[Name & Address of Concessionaire]

This is to certify that the Concessionaire i.e. M/s has fulfilled all its Conditions Precedent laid down in Article 4.2 of the Concession Agreement dated executed between The Commissioner, Municipal Corporation, Mandi, HIMACHAL PRADESH and the Concessionaire.

This should be construed as the “Certificate of Compliance” in terms of Article 4.3.3 of the Concession Agreement.

[Signed]
[Name & Designation of the Officer]

Ref. No.....

Dated

To,
[Name & Address of Authority]

This is to certify that the Authority i.e. The Municipal Corporation, Mandi, HIMACHAL PRADESH has fulfilled all its Conditions Precedent laid down in Article 4.1 of the Concession Agreement dated executed between The Commissioner, Municipal Corporation, Mandi, HIMACHAL PRADESH and the Concessionaire.

This should be construed as the “Certificate of Compliance” in terms of Article 4.3.3 of the Concession Agreement.

[Signed]
[Name & Designation of the Concessionaire’s Representative]



SCHEDULE-XII **COMPLETION CERTIFICATE**

(See Article 14.1.3)

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “Agreement”), for Development of Multi-Storey Parking cum Commercial Complex at U-Block, Mandi, HIMACHAL PRADESH (the “Project”) on design, build, finance, operate and transfer (DBFOT) basis through (Name of Concessionaire), hereby certify that the Tests specified in the Agreement have been successfully undertaken to determine compliance of the Project Facility with the provisions of the Agreement, and I am satisfied that the Project Facility can be safely and reliably placed in commercial service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all Works forming part of Project Facility have been completed, and the Project Facility is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the INDEPENDENT ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)
(Regn. No.)
(Ref. No.)



PROVISIONAL CERTIFICATE
(See Article 13.2.4)

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for Development of Multi-level Car Parking cum Commercial Complex at U-Block, Mandi (the “**Project**”) in design, build, finance, operate and transfer (DBFOT) basis through (Name of Concessionaire), hereby certify that the Tests specified in the Agreement have been undertaken to determine compliance of the Project Facility with the provisions of the Agreement.
- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[@] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Facility, pending completion thereof.
- 3 In view of the foregoing, I am satisfied that the Project Facility can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Facility is hereby provisionally declared fit for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
CONCESSIONAIRE by:
(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:
(Signature)
(Name and Designation)
(Address)

@ Strike out if not applicable.



SCHEDULE-XIII
VESTING CERTIFICATE
(See Article 33.4)

- 1 The Commissioner, Municipal Corporation Mandi, Himachal Pradesh (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for Development of Multi-level Car Parking cum Commercial Complex at U-Block, Mandi (the “**Project**”) in design, build, finance, operate and transfer (DBFOT) basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Handback Requirements set forth in Clause 33.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project Facility 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 construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Handback Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20..... at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.



SCHEDULE-XIV
ROLES AND FUNCTIONS OF INDEPENDENT
ENGINEER
(See Article 28)

1.1 The role and functions of the Independent Engineer shall include inter alia the following:

- (i) review of the Drawings and Construction Documents submitted by the Concessionaire including review of the detailed drawings, Good for Construction drawings, plans, construction methodology, quality assurance procedures, construction time schedule, etc. sent to it by the Concessionaire to ensure its compliance with the provisions of the Concession Agreement including Schedules, Applicable Laws and Applicable Permits, within the “**Review Period**” which shall not exceed 14 days;
- (ii) review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents;
- (ii) review, inspection and monitoring of Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the local building bye laws/ norms, and on the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards, the Scope of the Project, Technical Requirements and Performance Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project;
- (iii) review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report;
- (iv) for determining that the Construction Works conform to the applicable building construction codes, Technical Requirements and Performance Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The sample size of the tests, to be specified by the Independent Engineer under Paragraph (iv), shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests;



- (v) if at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof;
 - (vi) in the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Implementation Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same;
 - (viii) carry out, or cause to be carried out, all the Tests upon completion of Construction Works and issue a Construction Completion Certificate or Provisional Certificate substantially in the form set forth in Schedule-XII of the Concession Agreement, as the case may be. For carrying out its functions under this Paragraph (viii) and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the relevant provisions of the Concession Agreement read with Schedules;
 - (ix) aid and advise the Concessionaire in preparing the Maintenance Manual;
 - (x) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (xi) undertaking all other duties and functions in accordance with the Agreement;
 - (xii) Upon reference by the Authority, the Independent Engineer shall review and comment on the construction contract or any other sub-contract for construction of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority;
- 1.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 2. Determination of costs and time**
- 2.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 2.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.



3. Assistance in Dispute resolution

- 3.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 3.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement. Independent Engineer shall also comply with any other instructions and/ or directions issued by the Authority with respect to the Project.

5 Miscellaneous

- 5.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 5.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 5.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 5.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 5.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in soft copy form or in such other medium as may be acceptable to the Authority.