



# REQUEST FOR PROPOSAL

FOR

SELECTION OF SERVICE PROVIDER FOR OPERATION, MANAGEMENT AND MAINTENANCE OF BOOK CAFÉ'S CONSTRUCTED AT CHHOTA SHIMLA, CHAURA MAIDAN AND NEW SHIMLA, DISTT. SHIMLA, HIMACHAL PRADESH ON PPP MODE

August 2023

ISSUED BY:

HIMACHAL PRADESH INFRASTRUCTURE DEVELOPMENT BOARD (HPIDB)  
NEW HIMRUS BUILDING, CIRCULAR ROAD,  
SHIMLA-171001 (H.P.)

ON BEHALF OF:

MUNICIPAL CORPORATION SHIMLA (MC SHIMLA)  
Shimla Municipal Corporation, Old Judicial Complex, Near DC Office,  
The Mall Shimla, Himachal Pradesh – 171001

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## DISCLAIMER

1. The information contained in this **Request for Proposal** document (the “**RFP**”) or subsequently provided to bidder(s), whether verbally or in documentary or any other form, by the **Himachal Pradesh Infrastructure Development Board** (the “**HPIDB**”) on behalf of **Municipal Corporation Shimla (MC Shimla)** (the “**Authority**”) or any of its 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.
2. This RFP is not an agreement and is neither an offer nor invitation by the HPIDB on behalf of the Authority to the prospective bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in preparation of their Bid for qualification pursuant to this RFP.
3. This RFP includes statements, which reflect various assumptions and assessments arrived at by the HPIDB/ Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each bidder may require.
4. This RFP may not be appropriate for all persons, and it is not possible for the HPIDB/ Authority, 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.
5. Information provided in this RFP to the bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The HPIDB / Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
6. The HPIDB/ Authority, its employees and advisors make no representation or warranty and shall have no liability towards 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 the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with qualification of bidders for participation in the Bidding Process. The HPIDB/ Authority also accept no liability of any nature whether resulting from negligence or otherwise, howsoever, caused arising from reliance by any bidder upon the statements contained in this RFP.

7. The prospective bidders are hereby informed that the Book Cafés would be handed over to the Service Provider on as-is-where-is basis.
8. The Authority may, in its absolute discretion but without being under any obligation to do so, through HPIDB, update, amend or supplement the information, assessment or assumptions contained in this RFP.
9. The issue of this RFP does not imply that the HPIDB/ Authority is bound to select or to appoint the Selected bidder or Service Provider, as the case may be, for the Project and the HPIDB/ Authority reserves the right to reject all or any of the Bid or Bids without assigning any reasons whatsoever.
10. 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/ Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the bidder and the HPIDB/ Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## **GLOSSARY**

<b>Associate</b>	As defined in Clause 2.2.7
<b>Authority</b>	As defined in Disclaimer
<b>Bid Due Date</b>	As defined in Clause 1.1.4
<b>Bidder</b>	As defined in clause (i) of NIB
<b>Bid Security</b>	As defined in Clause 1.2.6
<b>Bid Validity Period</b>	As defined in Clause 1.2.5
<b>Bidding Documents</b>	As defined in Clause 1.1.6
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Conflict of Interest</b>	As defined in Clause 2.2
<b>MC Shimla</b>	Municipal Corporation Shimla
<b>Estimated Project Cost</b>	As defined in Clause 1.1.1
<b>Financial Eligibility Criteria</b>	As defined in Clause 2.2.1
<b>HPIDB</b>	Himachal Pradesh Infrastructure Development Board
<b>GoHP</b>	Government of Himachal Pradesh
<b>Gol</b>	Government of India
<b>LoA</b>	Letter of Award
<b>Net Worth</b>	As defined in Clause 2.2.2
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.1
<b>Rs. or INR</b>	Indian Rupee
<b>RFP</b>	As defined in the Disclaimer
<b>Selected Bidder</b>	As defined in Clause 3.5.2
<b>Technical Eligibility</b>	As defined in Clause 2.2.1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

### **NOTICE INVITING BIDS (NIB)**

- i. Himachal Pradesh Infrastructure Development Board (“**HPIDB**”), the nodal agency in the State of Himachal Pradesh for implementation of Public Private Partnership (PPP) Projects, on behalf of the Municipal Corporation Shimla (MC Shimla) (the “**Authority**”) invites bids (the “**Bid(s)**”) from interested entities (the “**Bidder**” or “**Bidders**”, as the context may require) to submit their Bids for “**Operation, Management & Maintenance of Book Café’s constructed at Chhota Shimla, Chaura Maidan and New Shimla, District Shimla, Himachal Pradesh on PPP Mode**” (the “**Project**”). The Service Provider shall further conform to and comply with the Acts, Rules and Guidelines of Municipal Corporation Shimla, as amended from time to time.
- ii. The total Project Site Area is approximately 424.32 sq. m. Site Plan, Layout and Drawings are provided at APPENDIX X.
- iii. The Service Provider shall undertake the Operation, Management & Maintenance of Book Café’s constructed at Chhota Shimla, Chaura Maidan and New Shimla, District Shimla, Himachal Pradesh on PPP Mode in accordance with Section 7 of this RFP over the Agreement Period of 10 (Ten) years extendable further by a period of 5 (Five) years on mutually agreed terms and conditions, at the sole discretion of the Authority subject to the terms and conditions as stipulated in the Operation, Management and Maintenance Agreement.
- iv. The Book Café’s shall be given on ‘**as-is-where-is basis**’.
- v. The Authority is now desirous of selecting a Bidder through competitive bidding on Highest Cost Selection (**HCS**) process in accordance with the procedure set out herein under this RFP who shall Operate, Manage & Maintain the Project for a pre-determined Agreement Period as mentioned in this RFP.
- vi. The Service Provider shall be responsible for Operating, Managing & Maintaining the entire project facilities in pursuance of the terms and conditions of the Operation, Management and Maintenance Agreement and further conform to and comply with the Acts, Rules and Guidelines of Municipal Corporation Shimla as well as Govt. of Himachal Pradesh, as amended from time to time.
- vii. It is to be noted by the Bidders that the Service Provider shall have the right to determine the Membership Fees, Daily Charges for Non-Member users to be charged for availing the Book Café services and Charges for other facilities including Food & Beverage (F&B), etc.



- viii. Complete Bidding Document comprising of the Request for Proposal Document (including ITB), Draft Operation, Management and Maintenance Agreement and Schedules to Draft Operation, Management and Maintenance Agreement can be downloaded from <http://himachalservices.nic.in/hpidb/>. The Bidders are required to make payment of **Rs. 10,000/ - (Rupees Ten Thousand Only) + Applicable GST**, as the cost of Bidding Documents to HPIDB in the form and manner mentioned in this RFP.
- ix. The Bids must be submitted at the office of HPIDB, Shimla in the manner as set out in the RFP.
- x. In case Bidders require any further information about the Project or need access to any other documents related to the Project, as available with the Authority or wish to visit the Project Site, they are requested to contact the following person at the addresses given below:

**General Manager**  
Himachal Pradesh Infrastructure Development Board  
New Himrus Building, Circular Road,  
Shimla-171001 (H.P.)  
Phone No.: +91 177-2626696, 2627312  
Email: [hpidb-hp@nic.in](mailto:hpidb-hp@nic.in)

The Bid shall be prepared in English language and all entries must be typed/written in blue/black ink. Initials of the Authorized Representative of the Bidder must attest all deletions and alterations made while preparation of the Bid.

- xi. HPIDB and/ or the Authority shall not be responsible for any costs or expenses or liabilities incurred by the Bidders in connection with the preparation and delivery of Bids, including costs and expenses related to the visits to the Project Site. HPIDB reserves the rights to cancel, terminate, change or modify this procurement process and/or requirements of bidding stated in the RFP, at any time without assigning any reason or providing any notice and without accepting any liability for the same.
- xii. The Bids received in response to this invitation/ RFP shall be evaluated based on the Eligibility Criteria specified in this RFP document.

## 1. INTRODUCTION

### 1.1 Background

1.1.1 Municipal Corporation Shimla (MC Shimla) has recently developed Book Cafés at Chhota Shimla, Chaura Maidan and New Shimla area in Shimla District, Himachal Pradesh. The facilities comprise of area for Book Cafés and parking area.

MC Shimla intends to Operate, Manage and Maintain Book Cafés on Public Private Partnership (PPP) Mode (Operation, Management, Maintenance and Transfer) with an aim to establish places of new trend of hanging out as the first and most popular choice for young and old people to enjoy their coffee time while reading and chatting. The Book Cafés will be handed over to the Selected Bidder/Service Provider on as-is-where-is basis. The Selected Bidder/Service Provider shall plan the utilization of built-up space as per details given in Section – 7 and ensure that all furnishing and finishing are in accordance with guidelines of Municipal Corporation Shimla and applicable regulatory framework. The Authority has decided to invite Bids for selection of prospective Bidder who shall undertake the **Project** through PPP mode. The brief particulars of the Project are:

Name of the Project	Estimated Project Cost	Total Site Area	Total Built-upArea	Agreement Period
Selection of Service Provider for Operation, Management And Maintenance of Book Cafés constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode (Operation, Management, Maintenance and Transfer)	To be assessed by the bidder	Approx. 424.32 sq. m	As per details provided in NIB.	10 (Ten) years, extendable by 05 (Five) years on mutually agreed terms and conditions, at the sole discretion of the Authority.

Himachal Pradesh Infrastructure Development Board (“**HPIDB**”) has been established for furtherance of purpose of Himachal Pradesh Infrastructure Development Act, 2001 and to provide for framework for participation by persons other than the State Government and Government agencies in financing, construction, maintenance and operation of infrastructure projects and to raise resources on behalf of the State Government for

infrastructure projects development. HPIDB on behalf of the Authority intends to select an eligible Bidder, as the Selected Bidder for awarding the Project through an open competitive bidding process in accordance with the procedure set forth herein.

- 1.1.2 The scope of work will broadly include the Operation, Management and Maintenance of the Book Cafés thereof in terms of Section 7 Terms of Reference and the Operation, Management and Maintenance Agreement. The Service Provider shall take over the Project Site on “**as is where is basis**”, Operate, Manage & Maintain, market, provide relevant assets, equipment, facility, clearances/approvals, providing ancillary services and amenities related to the Project Facilities conforming with relevant guidelines, rules and regulations and as per the guidelines of Municipal Corporation Shimla as amended from time to time along with the terms of the Operation, Management and Maintenance Agreement and Schedules hereof. After the completion of the Agreement Period or on termination of the Operation, Management and Maintenance Agreement, as the case may be, the Project Assets along with all facilities and infrastructure including all movable and immovable assets, existing as well as created or provided, as the case may be, by the Service Provider shall be handed over to the Authority.
- 1.1.3 The Selected Bidder / Service Provider (the “**Service Provider**”) shall be responsible for Operation, Management & Maintenance of the Project under and in accordance with the provisions of the Operation, Management and Maintenance Agreement (the “**Operation, Management and Maintenance Agreement**”) to be entered into between the Selected Bidder / Service Provider and the Authority in the form provided by the Authority as part of the Bidding Documents.
- 1.1.4 HPIDB shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by HPIDB, and all Bids shall be prepared and submitted in accordance with such terms on or before the due date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.1.5 The statements and explanations contained in this RFP are intended to provide a better 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 work and obligations of the Service Provider to be set forth in the Operation, Management and Maintenance Agreement or HPIDB’s rights to amend, alter, change, supplement or clarify the scope of work and the license to be awarded pursuant to this RFP or the terms thereof or herein contained. 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 HPIDB.

- 1.1.6 HPIDB shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP, to be set forth in the Operation, Management and Maintenance Agreement and other documents that are provided or may be provided by HPIDB, as modified, altered, amended and clarified from time to time by HPIDB (collectively the “**Bidding Documents**”).

## **1.2 Brief Description of Bidding Process**

- 1.2.1 HPIDB has adopted a single stage, Highest Cost Selection (HCS) process (“**Bidding Process**”) for selection of the Bidder for award of the Project. All Bidders for the Project shall simultaneously submit their relevant qualification details for the purpose of meeting the General Eligibility Criteria, Technical Eligibility Criteria and Financial Eligibility Criteria (“**Technical Bid**”) and Financial Bid quoting the Annual Concession Fee (the “**ACF**”) exclusive of all applicable taxes and GST payable to the Authority as mentioned in Clause 3.5.1 (“**Financial Bid**”) to HPIDB in accordance with the terms set forth in the RFP (the “**Financial Bid**”). The ACF shall increase at the rate of 10% in every 3 (three) years payable from 3<sup>rd</sup> month from the Appointed Date / Effective Date.
- 1.2.2 In the first step, Technical Bid of all Bidders shall be evaluated as to whether they are responsive in terms of Clause 2.19 and meet the Technical Qualification Criteria as set forth in Clause 2.2.1 of this RFP for undertaking the Project. The Financial Bids of only those Bidders who are considered responsive in Technical Qualification Criteria (the “**Qualified Bidder(s)**”) will be opened and evaluated for the purpose of identifying the Selected Bidder for the Project in accordance with Section 3.
- 1.2.3 Bids have to be submitted in Physical / Hard Copies at the office of HPIDB latest by the dates as specified in Section 1.3, and as per procedure laid down in Section 2.11 to 2.15. Bid submitted through any other mode shall not be entertained. The Instructions to Bidders (ITB) of the RFP document can be downloaded from the website <http://himachalservices.nic.in/hpidb>. Complete Bidding Document comprising of the Request for Proposal Document (including ITB), Draft Operation, Management and Maintenance Agreement and Schedules to Draft Operation, Management and Maintenance Agreement shall be downloaded from the <http://himachalservices.nic.in/hpidb>. Bid Document Fee of **Rs. 10,000/- (Rupees Ten Thousand Only) + Applicable GST**, shall be paid by way of Demand Draft in favour of “Himachal Pradesh Infrastructure Development Board”, payable at Shimla and shall be submitted along with the Technical Bid as the cost of the Bidding Documents. Schedule of bidding process given in Clause 1.3 below is tentative. HPIDB reserves the right to modify the schedule of Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever. Further, HPIDB reserves the right to hold, in its sole and absolute discretion,

more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the schedule shall stand modified and amended.

1.2.4 The Bidders would be required to furnish information specified in this RFP. The Bidders are requested to visit the Project Site to familiarize themselves with the Project at this stage itself. The Bidders interested in visiting the Project Site are requested to contact HPIDB. The cost of Project Site visit shall be borne by the Bidders.

1.2.5 The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the date specified in the RFP for submission of Bids (the **“Bid Validity Period”**).

1.2.6 In terms of this RFP, a Bidder will be required to deposit, along with its Bid, a bid security for an amount of **Rs. 3.00 Lakh (Rupees Three Lakh Only)** (the **“Bid Security”**), refundable no later than 90 (ninety) days from the Bid Due Date, except H1 & H2 Bidders whose Bid Security shall be retained :

- For and in respect to the Selected Bidder, till the submission of the Performance Security by the Selected Bidder or its nominated Service Provider pursuant to the provisions of the Operation, Management and Maintenance Agreement; and
- For the other bidder, till the date of issuance of Letter of Award for the Project.

The Bidders shall provide Bid Security in the form of a Demand Draft from any Nationalized Bank / Scheduled Commercial Bank in favour of Himachal Pradesh Infrastructure Development Board, payable at Shimla 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 days (One hundred and Eighty) days from the Bid Due Date including claim period at least 60 (Sixty) days. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security should be submitted along with the Technical Bid. The format of the bank guarantee has been given in Appendix – V.

### 1.3 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

S. No.	Event/ Activity Description	Target date/time period
1.	Issuance of Request for Proposal Document (RFP)	.....
2.	Last date of receipt of Pre-Bid queries	.....
3.	Pre Bid Conference at HPIDB office, New Himrus Building, Circular Road, Shimla– 171 001	.....
4.	Response to Pre Bid queries	.....
5.	<b>Bid Submission</b> Bids should be submitted in physical form to:The General Manager <i>Himachal Pradesh Infrastructure Development Board</i> <i>New Himrus Building, Circular Road,</i> <i>Shimla – 171 001</i>	.....
6.	Opening of Technical Bid	.....
7.	Presentation of the Concept	To be intimated to the bidders later
8.	Announcement of qualified Bidders	To be intimated separately to the qualified bidders
9.	Opening of Financial Bid	To be intimated separately to the qualified bidders
10.	Issuance of Letter of Award to the Selected Bidder	To be intimated separately to the selected bidder
11.	Signing of the Operation, Management and Maintenance Agreement	Within 30 days of Issuance of Letter of Award

## **2. INSTRUCTIONS TO BIDDERS**

### **GENERAL**

#### **2.1 General Terms of Bidding**

- 2.1.1 HPIDB wishes to receive Bids for selection of an experienced and capable Bidder for the Project who meets the eligibility Criteria for Technical Evaluation as mentioned in Clause 2.2.1.
- 2.1.2 Subsequently, the Financial Bid of qualified Bidders shall be opened and evaluated.
- 2.1.3 The Bidders shall be responsible for all the costs associated with the preparation of their Bids and their participation in the Bidding Process. HPIDB shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 2.1.4 Bids shall be accepted only in physical form and in case it has been submitted in any other form it shall be rejected summarily.

#### **2.2 Eligibility and qualification requirement of Bidder**

- i. The Bidder shall be a single entity.
- ii. A Bidder may be an Individual, Sole Proprietorship, Partnership firm, LLP under the Limited Liability Partnership Act, 2008 or a Company (Public or Private Ltd.) incorporated under the Companies Act 1956/2013. All the entities shall be required to submit proof of their statutory registration/ incorporation as per their respective governing Statutes/ Acts.
- iii. The Bidder shall not have a conflict of interest (the **“Conflict of Interest”**) that affects the Bidding Process. Any Bidder found to have Conflict of Interest shall be disqualified. The Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - a) The Bidder, its Associate(s) (or any constituent thereof) and any other Bidder, it's any Associate(s) thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of the Bidder, its Associate(s) thereof (or any shareholder thereof having a shareholding of more than 25% (twenty-five percent) of the subscribed and paid up equity share capital of such Bidder, its Associate(s), as the case may be) in the other Bidder, its Associate(s) is less than 25% (twenty-five percent) 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 72 of the Companies Act, 2013. For the purposes of Clause 2.2, indirect shareholding held through one or more intermediate persons shall be computed as follows: (a)

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 (b) subject always to sub-clause(a) above, where a person does not exercise control over an intermediary, which has shareholding 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 (b) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; a constituent of such Bidder is also a constituent of another Bidder; or

- b) Such Bidder, or any Associate(s) thereof, receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate(s) thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Associate(s) thereof; or
- c) Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- d) Such Bidder, or any Associate(s) thereof, has a relationship with another Bidder, or any Associate(s) thereof, 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
- e) Such Bidder, its employees, directors, partners or any of its Associate(s) thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- f) Bidder shall be liable for disqualification if any legal, financial or technical adviser of HPIDB in relation to the Project is engaged by the Bidder, its Associate(s) thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Associate(s) 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 twelve months from the date of completion of Bid submission.

2.2.1 To be eligible for detailed technical evaluation in accordance with Article 3, a Bidder shall be required to fulfill the following eligibility criteria:



**A. General Eligibility Criteria:**

- i. The bidder should have minimum 3 years' experience since its registration/ establishment in Operation, Management & Maintenance / Management of Cafés/ Restaurant/ Tea Shop/ Canteen/ Book Café or Tourism / Hospitality projects.
- ii. The bidder should have a valid GST and PAN number.
- iii. The bidder shall be ineligible if he has been debarred or blacklisted by any Central / State Government Department / Board / Corporation in India. An undertaking / Affidavit in respect of this shall be enclosed.
- iv. The Bidder should have a Solvency of at least Rs. 1 Crore as on the Bid Due Date.

**Note: In case the bidder fulfills the Technical Eligibility criteria as per Clause 2.2.1 (B) (iii) of the RFP, eligibility criteria mentioned in 2.2.1 (A) (i) shall not be applicable.**

**B. Technical Eligibility Criteria:** During the last 5 (five) years, the bidder shall have:

- i. Experience in operation, management & maintenance / management of at least 3 (three) café/ restaurant/ tea shop/ canteen/ Book Café, with a minimum seating capacity of 30 persons;

OR

- ii. Experience in Operation, Management & Maintenance of hospitality / tourism projects with cumulative investment of more than Rs. 5 Crores (Rupees Five Crores).

**Where, hospitality / tourism sector projects shall mean bars, food courts, banquet halls, convention centres.**

OR

- iii. Net Worth of Rs. 5 Crores as at the closing of the preceding financial year before the Bid Due Date.

**Note:**

1. **In case Bidder is claiming Operation, Maintenance, Management experience, it should have/have been operated/ operating, maintained/ maintaining, managed/ managing any such project for a continuous period of at least 01 (one) year during the last 05 (five) years.**
2. **In case bidder fulfills the Technical Eligibility Criteria as per Clause 2.2.1 (B) (iii) of the RFP, Eligibility Criteria mentioned in 2.2.1 (A) (i) shall not be applicable.**

**C. Financial Eligibility Criteria:**

- i. The Bidder shall have a Net Worth of **Rs. 50 Lakh (Rupees Fifty Lakh only)** at the closing of the preceding Financial Year before the Bid Due Date.
- ii. The bidder must have **positive Cash Flows** for any 3 of the last 5 Financial Years. Documentary evidence in the form of CA Certificate as well as copies of ITRs and Financial Statements for last 5 years must be furnished along with the Technical Bid.

**Note: Eligibility criteria mentioned in 2.2.1 (C) (ii) shall not be applicable:**

- 1. In case bidder fulfills the Technical Eligibility Criteria as per Clause 2.2.1 (B) (iii) of the RFP;**

**2.2.2** The Bidders shall also enclose with its Bid the following documents:

- i. Certificate(s) from Statutory Auditors of the Bidder/ Associate(s) or a practicing Chartered Accountants, or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in Clause 2.2.1 (B) (i) & (ii) above. 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
- ii. Certificate from Statutory Auditors /practicing Chartered Accountant of the Bidder or its Associate Associate(s) specifying the Net Cash Flows over last 5 (Five) Financial Years and Net Worth of the Bidder, as at the close of the preceding Financial Year, and also specifying that the methodology adopted for calculating such Net Worth confirms to the provisions of this Clause 2.2.2(ii) of the RFP. For the purposes of this RFP, Net worth (the “**Net worth**”) shall mean:
  - a. **In case of Bidder being a Company:** the sum of subscribed and paid up Equity Share Capital and Reserves & Surplus. Sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders and accumulated losses shall be deducted from Reserves & Surplus.
  - b. **In case of Bidder being a Partnership Firm/ LLP:** [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]
  - c. **In case of Bidder being a Sole Proprietorship/ Individual\*:** Total Assets- Total Liabilities

**\*Note: In case of Bidder being an Individual, certificate from a registered valuer certifying the Market Value of asset claimed is required as on 31.03.2023.**

**2.2.3** The Bidder should submit a Power of Attorney as per the format prescribed under Appendix-II, authorizing the signatory of the Bid to commit the Bidder. The Power of Attorney should be supported by a Board Resolution confirming the Authorized Signatory.

**2.2.4** The Bidder being a single entity, may be required to form an appropriate Special Purpose Vehicle, if the Authority so desires, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the Operation, Management and Maintenance Agreement and implement the Project.

**2.2.5** Any entity (the Bidder, its Associate(s) was, either by itself or as member of a consortium) which

has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project and the bar subsists as on the date of Bid, would not be eligible to submit a Bid.

2.2.6 A Bidder including any of its Associate(s) 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 Associate(s), 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 Associate(s) nor the Bidder or Associate(s) shall have paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.6 is such that it does not reflect :-

(a) any malfeasance on its part in relation to such cause or event;

(b) any wilful default or patent breach of the material terms of the relevant contract;

(c) any fraud, deceit or misrepresentation in relation to such contract; or

(d) any rescinding or abandoning of such contract, it may make a representation to this effect to HPIDB for seeking a waiver from the disqualification hereunder and HPIDB may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.7 While evaluating the Eligibility of the Bidder, the General Eligibility, Technical Eligibility and Financial Eligibility of their respective Associate(s) would also be eligible hereunder.

For purposes of this RFP, Associate(s) means, in relation to the Bidder/ a person who controls, is controlled by, or is under the common control with such Bidder/ (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or shall be provided to demonstrate that a person is an Associate(s) of the Bidder as the case may be.

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 must apply to the Bidder or Associate(s) named in the Bid and not, unless specifically requested, to other associated companies or firms.
- iii. in response to the bidding document, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and

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

While the process is open to persons from any country subject to Clause 2.2.9, 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 is held by persons resident outside India or where a Bidder 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; then the qualification and/ or opening of Financial Bid and/ or award of the Project to such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of HPIDB from the perspective of national security and public interest perspective. The decision of HPIDB in this behalf shall be final and conclusive and binding on the Bidder.

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

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

The Bidder shall promptly inform HPIDB 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 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purpose of it's Bid and furnish all its information and certification with reference to the 5 (five) years, preceding it's latest financial year. For the avoidance of doubt, financial year shall, for the purpose of this Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

### **2.3 Change in Ownership**

2.3.1 By submitting the Bid, the Bidder acknowledges that it shall continue to hold 100% of subscribed and paid up equity share capital in the SPV/ Service Provider until the 10<sup>th</sup> Anniversary of COD of the project and further not less than 51% of subscribed and paid up equity share capital till the end of Agreement Period.

2.3.2 The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Operation, Management and Maintenance Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Operation, Management and Maintenance Agreement, be deemed to be a breach of the Operation, Management and Maintenance Agreement and dealt with as such there under.

2.3.3 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of an Associate(s) whose Technical Eligibility and/ or Financial Eligibility was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform HPIDB forthwith along with all relevant particulars about the same and HPIDB may, in its sole discretion, disqualify the Bidder or withdraw the LoA from the Selected Bidder, as the case may be.

2.3.4 In the event such change in control occurs after signing of the Operation, Management and Maintenance Agreement but prior to the 10<sup>th</sup> (tenth) anniversary of the date of Commercial Operations of the Project, it would, notwithstanding anything to the contrary contained in the Operation, Management and Maintenance Agreement, be deemed to be a breach of the Operation, Management and Maintenance Agreement, and the same shall be liable to be terminated without HPIDB / Authority being liable in any manner whatsoever to the Service Provider. In such an event, notwithstanding anything to the contrary contained in the Operation,

Management and Maintenance Agreement, HPIDB / 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 that may be available to the Authority under the Bidding

Documents and/ or the Operation, Management and Maintenance Agreement or otherwise.

## **2.4 Number of Bids**

2.4.1 No Bidder shall submit more than one Bid for the Project. If any Bidder submits or participate in more than one Bid then Bids of such bidder shall be disqualified.

## **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 location, surroundings, climate, availability of power, water and other utilities for re-development, access to site, weather data, applicable laws and regulations or any other matter considered relevant by them. The Bidders shall visit the Project Site in accordance with the provision of Clause 1.2.4.

## **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. Acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of HPIDB or relating to any of the matters referred in Clause 2.5 above; and
- iv. Agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2 HPIDB 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 RFP or the Bidding Process, including any error or mistake therein or in any information or data given by HPIDB.

## **2.7 Right to Accept or Reject any or all Bid/ 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 whatsoever or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event HPIDB rejects or annuls all the Bid/Bids, it may, in its discretion, invite all Bidder(s) to submit fresh Bid /Bids hereunder.

2.7.2 HPIDB reserves the right to reject any Bid and/or disqualify the Bidder if:

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

- 2.7.3 If such disqualification/ rejection occurs after the Bids have been opened and the successful bidder gets disqualified/ rejected, then HPIDB reserves the right to take any such measure as may be deemed fit in the sole discretion of HPIDB, including annulment of the Bidding Process.
- 2.7.4 In case it is found during the evaluation or at any time before signing of the Operation, Management and Maintenance Agreement or after execution of the Operation, Management and Maintenance Agreement and during the period of subsistence thereof, including the Operation, Management and Maintenance Rights 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 Service Provider either by issue of the LoA or entering into of the Operation, Management and Maintenance Agreement, and if the Bidder has already been issued the LoA or has entered into the Operation, Management and Maintenance 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 / Authority to the Bidder, without HPIDB / Authority being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which HPIDB / Authority may have under this RFP the Bidding Documents, the Operation, Management and Maintenance Agreement or under applicable law.
- 2.7.5 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 the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

## **B. DOCUMENTS**

### **2.8 Contents of the RFP**

- 2.8.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

#### **Invitation for Bids**

Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Criteria for Evaluation
Section 4	Fraud and Corrupt Practices
Section 5	Pre Bid Conference
Section 6	Miscellaneous
Section 7	Terms of Reference

## Appendices and Annexures

APPENDIX I: Letter Comprising the Bid

Annexure I: Details of Bidder

Annexure II: Technical Eligibility of Bidder

Annexure III: Financial Eligibility of Bidder

Annexure IV: Statement of Legal Capacity

APPENDIX II: Format for Power of Attorney for signing of Bid

APPENDIX III: **DELETED**

APPENDIX IV: **DELETED**

APPENDIX V: Format of Bank Guarantee for Bid Security

APPENDIX VI: Guidelines of the Department of Disinvestment

APPENDIX VII: SELF UNDERTAKING

APPENDIX VIII (A): Covering Letter for Financial Bid

APPENDIX VIII (B): Financial Bid

APPENDIX IX: Certificate regarding compliance with restrictions under rule 144 (xi) of the general financial rules (GFRs)

APPENDIX X: Site Plan, Layouts and Drawings

2.8.2 The Draft Operation, Management and Maintenance Agreement provided by the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

## 2.9 Clarifications

2.9.1 The Bidders may email their queries to [hpiddb-hp@nic.in](mailto:hpiddb-hp@nic.in) provided in Notice Inviting Bid in the format specified below. The document containing the pre-bid queries to be emailed shall bear the following identification:

**"Queries concerning RFP for Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla , Chaura Maidan and New Shimla , Distt. Shimla on PPP mode in the State of Himachal Pradesh"**

S. No.	Clause/Page No.	Content of the RFP requiring clarifications	Change/clarification requested
1.			
2.			
3.			



2.9.2 The Bidders should send in their queries at least 2 (two) days prior to the Pre-Bid Conference date specified in the Schedule 1.3 of the RFP. HPIDB shall endeavor to respond to the queries within the period specified therein.

Thereeto, but no later than 7 (seven) days prior to the Bid Due Date, HPIDB may choose to upload the responses on the website <http://himachalservices.nic.in/hpidb> specified in the RFP advertisement.

2.9.3 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 HPIDB to respond to any question or to provide any clarification.

2.9.4 HPIDB may, on its own, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by HPIDB shall be deemed to be part of the RFP. Verbal clarifications and information given by HPIDB or its employees or representatives shall not in any way or manner be binding on HPIDB.

## **2.10 Amendment of the RFP**

2.10.1 At any time prior to the deadline for submission of Bid, HPIDB may, for any reason, whether at its own initiative or in response to clarifications requested by Bidder, modify the RFP by the issuance of Addendum.

2.10.2 Any Addendum thus issued will only be uploaded on the website <http://himachalservices.nic.in/hpidb>.

2.10.3 In order to afford the Bidders a reasonable time in which to take an Addendum into account, or for any other reason, HPIDB may, at its own discretion, extend the Bid Due Date.

## **C. PREPARATION & SUBMISSION OF BID**

### **2.11 Language**

2.11.1 The Bid and all related correspondence and documents should be written in the English language. Supporting documents and printed literature uploaded on website by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of 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. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

2.11.2 All communication provided should be legible, and wherever the information is given in figures,

the same should also be mentioned in words. In case of different in amounts stated in figures and words, the amount stated in words only will be taken as correct and final.

## **2.12 Format & Signing of Bid**

2.12.1 The Bidder shall provide all information sought under this RFP. HPIDB would evaluate only those Bids that are received in the required format and complete in all respects. Incomplete and / or conditional Bids shall be liable for rejection.

2.12.2 The Bid shall be stamped and signed by the Authorized Signatory of the Bidder. 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 be initialed by the person(s) signing the Bid. The Bid shall contain page numbers.

## **2.13 Bid Due Date**

2.13.1 HPIDB may, in its sole discretion, extend the Bid Due Date by issuing an Addendum for all Bidders as mentioned in Clause 2.10 above

## **2.14 Late Bids**

2.14.1 Bids received by HPIDB after the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. HPIDB shall not be responsible for any delay in submission of the same.

## **2.15 Modification/ Substitution/ Withdrawal of Bids**

2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission provided that written notice of the modification, substitution or withdrawal is received by HPIDB within the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date.

2.15.2 Any alteration/modification in the Bid or additional information material supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by HPIDB, shall be disregarded.

## **2.16 Submission of Bid**

2.16.1 Techno-Commercial Bid shall be submitted by due date and time as mentioned in Clause 1.3 of this RFP document, at the office of HPIDB. Technical Bids and Financial Bid shall be in separate sealed envelopes and clearly marked as Technical Bid and Financial Bid. Further, both these envelopes should be enclosed in another envelope super scribing:

***"Selection of Service Provider for Operation , Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. in Shimla, Himachal Pradesh on PPP".***

## **D. Evaluation Process**

### **2.17 Opening & Evaluation of Bids**

- 2.17.1 HPIDB would open the Bids as per the schedule specified in Clause 1.3 of this RFP in the presence of the Bidders who choose to attend.
- 2.17.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.15 shall not be opened.
- 2.17.3 HPIDB would subsequently examine and evaluate Bids in accordance with the provisions set out in **Section 3** on “Criteria for Evaluation of Bids”.
- 2.17.4 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.
- 2.17.5 Any information contained in the Bid shall not in any way be construed as binding on HPIDB, its consultants, agents, successors or assigns, but shall be binding against the Bidder if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 HPIDB reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Bid without assigning any reasons.
- 2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, HPIDB may, in its sole discretion, exclude the relevant project from computation of the Technical Eligibility of the Bidder.
- 2.17.8 In the event the Bidder claims credit for an Eligible Project, and such claim is determined by HPIDB as incorrect or erroneous, HPIDB shall reject such claim and exclude the same from computation of the Technical Eligibility. 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 2.7.1 and 2.7.4.

### **2.18 Confidentiality**

- 2.18.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising HPIDB in relation to or matters arising out of, or concerning the Bidding Process. HPIDB shall treat all information, submitted as part of Bid, in confidence and would require all those who have access to such material to treat the same in confidence. 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 HPIDB or as may be required by law or in connection with any legal process.

## **2.19 Tests of Responsiveness**

2.19.1 Prior to evaluation of Bids, HPIDB will determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- i. It is received as per formats given in this RFP;
- ii. It is received within the Bid Due Date including any extension thereof pursuant to Clause 2.13;
- iii. It is signed, stamped and marked as stipulated in Clauses 2.12;
- iv. It contains the Bid Security of Rs. 3.00 Lakh (Rupees Three Lakh only) in form of Demand Draft or a Bank Guarantee acceptable to the HPIDB;
- v. It contains all information (complete in all respects) as stipulated in the RFP;
- vi. It contains information as per the formats specified in this RFP. Non-adherence to the formats may be a ground for declaring the Bid as non-responsive;
- vii. It contains certificates from its Statutory Auditors/ practicing Chartered Accountant in the formats specified at **Annexure II: Technical Eligibility of Bidder of the RFP for each Eligible Project and at Annexure III: Financial Eligibility of Bidder;**
- viii. Financial Bid should **NOT** be part of the Technical Bid and should be in a separate sealed envelope;
- ix. It does not contain any condition or qualification; and
- x. It is not non-responsive in terms hereof.

2.19.2 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.

## **2.20 Clarifications from Bidders**

2.20.1 To facilitate evaluation of Bids, HPIDB may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarifications shall be provided within the time specified by HPIDB for this purpose. Any request for clarifications and all clarifications shall be in writing.

2.20.2 If the Bidder does not provide clarifications sought under Clause 2.20.1 within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, HPIDB may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of HPIDB.

## **2.21 Proprietary Data**

2.21.1 All documents and other information supplied by HPIDB or submitted by the 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 shall not return any Bid or any information provided along therewith.

## **2.22 Correspondence with Bidder**

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

## **E. BID SECURITY**

### **2.23 Bid Security / Earnest Money Deposit (EMD)**

2.23.1 The Bidder shall furnish as part of its Bid, a Bid Security of Rs. 3,00,000/- (Rupees Three Lakhs Only) in the form of a Demand Draft drawn on a Scheduled Bank in India, drawn in favour of Himachal Pradesh Infrastructure Development Board and payable at Shimla (the “**Bid Security**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free. Bid Security can also be in the form of Bank Guarantee issued by a Nationalized/ Scheduled in India in favour of Himachal Pradesh Infrastructure Development Board and Payable at Shimla, Himachal Pradesh, in the format at Appendix - V 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.

2.23.2 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.

2.23.3 The Bid Security of unsuccessful Bidders will be returned by HPIDB, as mentioned in Clause 1.2.6 above or when the Bidding process is cancelled by the HPIDB/Authority, without any interest. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee Demand Draft 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 shall be drawn by 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.

2.23.4 The successful bidder’s Bid Security will be returned, without any interest, upon the Bidder signing the Operation, Management and Maintenance Agreement and furnishing the

Performance Security in accordance with the provisions thereof.

2.23.5 HPIDB shall be entitled to forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation / damages to the HPIDB/Authority in any of the events specified in Clause 2.23.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that HPIDB/Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.23.6 The Bid Security shall be forfeited and appropriated by the HPIDB as mutually agreed genuine pre-estimated compensation and damages payable to HPIDB for, inter alia, time, cost and effort of HPIDB/Authority 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 submits a non-responsive Bid;
- ii. If the Bidder submits or divulges Financial Bid in the Technical Bid.
- iii. If the Bidder submits Financial Bid along with the Technical Bid in the same envelope as Technical Bid.
- iv. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- v. 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;
- vi. In the case of successful bidder, if it fails within the specified time limit -
  - a. to sign the Operation, Management and Maintenance Agreement and/or
  - b. to furnish the Performance Security within the period prescribed therefore in the Operation, Management and Maintenance Agreement; or
- vii. In case the successful bidder, having signed the Operation, Management and Maintenance Agreement, commits any breach thereof prior to furnishing the Performance Security.

## **F. PERFORMANCE SECURITY**

### **2.24 Performance Security**

2.24.1 The successful bidder shall furnish to the Authority, Performance Security, in the form of an irrevocable and unconditional Bank Guarantee issued by a Scheduled Bank in India, drawn in favour of Municipal Corporation Shimla and payable at Shimla for due and faithful performance of its obligations, for a value equal to Rs. 50,00,000/- (Rupees Fifty Lakh Only), within 30 days of the issue of Letter of Award (LOA). This Bank Guarantee shall be returned to the successful bidder after 6 months of the completion of Agreement Period or Termination, whichever is earlier.

- 2.24.2 In case of breach of any of the provisions of the contract the Authority shall revoke the Performance Bank Guarantee to apportion the losses on account of such breach.
- 2.24.3 The bidder shall have to replenish the Bank Guarantee after such apportionment to its original value (in case of partial appropriation) or furnish a new Bank Guarantee of same value (in case of total appropriation), as the case may be.

### 3. CRITERIA FOR EVALUATION OF BIDS

#### 3.1 Evaluation Parameters

3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2 of this RFP above shall qualify for participation in the Bidding Process. Bids of firms who do not meet these criteria shall be rejected.

3.1.2 The Clients evaluation committee shall evaluate the Technical Bids on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system specified below. Each responsive Bid will be given a technical score. A Bid shall be rejected at this stage if it does not respond to important aspects of the RFP.

S. No	Criteria	Basis for evaluation	Max. Marks	Supporting Documents
1	Technical Eligibility	<p>Projects undertaken in last five years:</p> <p>Experience in operation, management &amp; maintenance / management of at least 3 (three) café/ restaurant/ tea shop/ canteen/ Book Café, with a minimum seating capacity of 30 persons;</p> <p style="text-align: center;"><b>20 Marks</b> OR</p> <p>Experience in Operation, Management &amp; Maintenance of hospitality / tourism projects with cumulative investment of more than Rs. 5 Crores (Rupees Five Crores)</p> <p style="text-align: center;"><b>20 Marks</b></p> <p><i>Additional 5 marks for every additional unit of similar experience (as applicable) subject to maximum 20 marks.</i></p> <p style="text-align: center;">OR</p>	40	<p>Certificate(s) from Statutory Auditors of the Bidder/ Associate(s) or a practicing Chartered Accountants, or the concerned client(s), wherein all the requisite information can be derived.</p>



		Net Worth of Rs. 5 Crores as at the closing of the preceding financial year before the Bid Due Date. 20 marks  <i>Additional 10 marks for every additional Rs. 1 Cr</i>		
2	Net Worth at the closing of the preceding Financial Year before the Bid Due Date	Equal to INR 50 Lakh: <b>15 marks</b> More than INR 50 Lakh up to 1.0 Crore: <b>20 marks</b> More than INR 1.0 Crores up to 2.0 Crore: <b>25 marks</b> More than INR 2.0 Crores: <b>30 marks</b>	30	Certificate from Statutory Auditor (SA) along with financial statements (Audited Balance Sheets).
3	Presentation on Approach and demonstrating bidder's concept on best use of the components of Book Café	Qualitative assessment based on Demonstration of understanding of the Department's requirements covering:  Understanding of the objectives of the Project, approach to the project components.  Methodology for carrying out the commercial activities and obtaining the expected output.  Generation of Demand and targeted audience.  Proposed business Model.  Best use of the components of the Project.  Maintenance Plan.	30	Bidder, to submit the presentation along with its bid and would require to present the same on the date, time and venue intimated by the client.
<b>The minimum technical score required to pass is 70 marks</b>				

### 3.2 Details of Experience

3.2.1 The Bidder should furnish the details of Eligible Experience for the past 5 (five) years preceding the Bid Due Date.

3.2.2 The Bidders must provide the necessary information relating to Technical Eligibility as per format at Annexure II of Appendix I.

3.2.3 The Bidder should furnish the required project-specific information and evidence in support its claim of Technical Eligibility, as per format at Annexure-II of Appendix-I.

### **3.3 Financial Information for the Purpose of Evaluation**

3.3.1 The Bid must be accompanied by Audited Annual Reports of the Bidder and of the Associate(s) if relying on the Net Cash Flows & Net-worth of Associate(s) for the purpose of qualification for the last 5 (five) financial years, preceding the Bid Due Date.

**Note: In case of new established bidder, Audited Annual Reports are not required.**

3.3.2 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 5 (Five) years preceding the year for which the Audited Annual Report is not being provided.

3.3.3 The Bidder must establish Financial Eligibility specified in Clause 2.2.1 (C) and provide details as per format at Annexure III: Financial Eligibility of Bidder of Appendix I: Letter Comprising the Bid.

### **3.4 Short listing of Bidders**

3.4.1 HPIDB shall qualify and shortlist the Bidders who fulfill the stipulated Technical and Financial Eligibility criteria as set out in this RFP.

3.4.2 HPIDB will notify the other Bidders also who do not fulfill either or both of the Technical and Financial Eligibility. HPIDB will not entertain any query or clarification from Bidders who fail to qualify.

### **3.5 Selection of Bidder**

3.5.1 The HPIDB would open the Bid as per the schedule specified in Clause 1.3. The Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and 3.3, shall only be eligible for evaluation as per clause 3.1.2 and opening of Financial Bids.

3.5.2 Subject to Clause 3.5.1 above, a Bidder who quotes highest ACF shall be declared as the selected bidder (the "**Selected Bidder**"). Generally, the Highest Bidder (H1) shall be the selected Bidder. In case such Highest Bidder withdraws or is not selected for whatsoever reason, the Authority reserves the right to either annul the Bidding Process & invite fresh BIDs or to ask the second highest Bidder (H2) to match the H1 quote. And if the second highest bidder (H2) fails to match the H1 quote then asks the third highest Bidder (H3) to match H1 quote and if the H3 fails to match than likewise ask H4, H5 and so on to match the H1 Quote.

3.5.3 The Bidder shall be required to pay the following amounts to the Authority:

***“Annual Concession Fee (ACF) as quoted by the bidder to be escalated at 10% every 3 (three) years payable from the beginning of 3rd month from the Effective Date / Appointed Date (date of which Conditions Precedent are fulfilled by both the Parties in accordance with ARTICLE 4 of the Operation, Management and Maintenance Agreement).”***

3.5.4 Notwithstanding anything to the contrary contained in this RFP, HPIDB reserves the right to reject or annul the Bidding Process and/ or reject any Bid at any stage without assigning any reason. In the event that HPIDB rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

### **3.6 Award of the Project**

3.6.1 After selection, a Letter of Award (the **“LOA”**) shall be issued by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.6.2 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Service Provider to execute the Operation, Management and Maintenance Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Operation, Management and Maintenance Agreement.

### **3.7 Contacts during Bid Evaluation**

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, save and except as required under the Bidding Documents, from contacting by any means, HPIDB and/or their employees/ representatives on matters related to the Bids under consideration.

#### **4. FRAUD & 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. Notwithstanding anything to the contrary contained herein, HPIDB shall reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of HPIDB under Clause 4.1 hereinabove, if a Bidder is found by HPIDB 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, such Bidder shall not be eligible to participate in any tender or RFP issued by HPIDB during a period of 2 (two) years from the date such Bidder is found by HPIDB 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, as the case may be.
- 4.3 For the purposes of this Section 4 Fraud & Corrupt Practices, the following terms shall have the meaning hereinafter respectively assigned to them:
- I. **“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 HPIDB who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the Operation, Management and Maintenance Agreement or arising there from, 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 HPIDB, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.2, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LoA or after the execution of the Operation, Management and Maintenance Agreement, as the case maybe, any person in respect of any matter relating to the Project or the LoA or the Operation, Management and Maintenance Agreement, who at any time has been or is a legal, financial or technical adviser of HPIDB in relation to any matter concerning the Project;
  - II. **“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;
  - III. **“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;

- IV. “**Undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by HPIDB 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
- V. “**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.

## **5. PRE BID CONFERENCE**

- 5.1 The Pre-Bid Conference shall be convened at the designated date, time and place to be specified.
- 5.2 A maximum of 3 (three) representatives from each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.3 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of HPIDB in writing. 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.
- 5.4 The Bidders may email their queries to the email Ids provided in Notice Inviting Bid in the format specified below. The document containing the pre-bid queries to be emailed shall bear the following identification:

*“Queries concerning RFP for Selection of Service Provider for Operation Management and Maintenance of Book Café’s Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode “*

<b>S. No.</b>	<b>Clause/Page No.</b>	<b>Content of the RFP requiring clarifications</b>	<b>Change/clarification requested</b>
1.			
2.			
3.			

## **6. MISCELLANEOUS**

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Shimla, India shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in-connection with the Bidding Process.
- 6.2 HPIDB, 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;
  - iv. Retain any information and/ or evidence submitted to HPIDB by, on behalf of, and/ or in relation to any Bidder;
  - 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; and/or
  - vi. Supplement/Modify/Amend/Alter the terms of grant of rights to operate, manage and maintain pursuant to this RFP, or technical/financial or any other parameter for selection or evaluation of the Bidders or any terms and conditions of this RFP.
- 6.2.1. In order to afford the bidders a reasonable time for taking addendum / supplement / modification etc. into account or for any other reason, the HPIDB may, at its own discretion, extend the Bid Due Date and time.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases HPIDB/ 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.

## **7. TERMS OF REFERENCE**

### **7.1 Introduction**

Municipal Corporation Shimla (MC Shimla) is one of the oldest municipalities of India, which dates back to 1851. MC Shimla is entrusted with the development related matters of the municipal areas and providing basic civic amenities within the Jurisdiction of Distt. Shimla, Himachal Pradesh.

MC Shimla has identified and developed 3 Book Cafés with an aim to encourage and endorse a trend of hanging out places being first and most popular choice among young and old people to enjoy their coffee time while reading and chatting. Accordingly, Himachal Pradesh Infrastructure Development Board (HPIDB) in close coordination with MC Shimla has appointed us - M/s Almondz Global Infra-Consultants Limited as the Transaction Advisor to determine the overall financial feasibility and assist in selection of Service Provider for Operation, Management and Maintenance of Book Cafés constructed at

- Chhota Shimla,
- Chaura Maidan and
- New Shimla

in Distt. Shimla Himachal Pradesh on PPP mode.

### **7.2 Project Objective**

The objective of the project is to create a space for people of Shimla as well people visiting Shimla where they can read and relax with a cup of warm tea & coffee. The aim is to create an ambience and infrastructure which truly represents thought of modern city, along with providing a cosiness of one of the oldest hill stations in India.

### **7.3 Scope of Work**

7.3.1 The Service Provider shall undertake all the activities pertaining to and incidental to the Operation, Management & Maintenance of Book Cafés at Chhota Shimla, Chaura Maidan & New Shimla in Shimla, Himachal Pradesh including, but not limited to the following:

- i. Taking over of the Project Site on “as is where is basis” and plan, design, finance and upgrade the facility, marketing, providing relevant assets, equipment, clearances/approvals, providing ancillary services and amenities related to the Project as per terms of the RFP, Operation, Management and Maintenance Agreement and Schedules thereof.
- ii. Use of quality materials for Furniture, Furnishings and all Fixtures, etc. to be in accordance with the Industry Standard.
- iii. Provide all equipment and appliances in kitchen and seating areas, IT systems, computers and peripherals, office equipment, OFC connectivity, LED screens, consoles, LED TVs, sofas, tables, chairs, electric kettles, etc.
- iv. Maintaining the standards in accordance with the guidelines, if any issued and amended from time to time by MC Shimla.



7.3.2 Besides the above works pertaining to implementation of the project the Service Provider shall have the following OM&M and other obligations as well:

- i. The Service Provider shall be responsible for seeking and maintaining all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, food license, etc.
- ii. The Service Provider shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the vendors for various installations.
- iii. The Service Provider shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the Implementation phase as well as during the currency of the agreement all relevant insurances as per statutory requirements or otherwise should be in place.
- iv. The Service Provider shall maintain the entire premises in accordance with Good Industry Practice.
- v. The Service Provider shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- vi. Meeting the requirements and norms laid down by the competent authorities regarding Maintenance of the Project Facilities, if any.
- vii. Provision for availability of personnel on 12 hours on Reception Area for providing assistance to the guests visiting the Book Cafes, with an ability to communicate in English and Hindi or any other Indian regional language or any foreign language.
- viii. Performance and fulfilment of all obligations of the Service Provider in accordance with the provisions of the Operation, Management and Maintenance Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Provider under the Operation, Management and Maintenance Agreement.

#### **7.4 Site Plan**

The Site Plan, Layout and Drawings are provided at APPENDIX –X.

#### **7.5 Nomenclature of the Book Café**

The Service Provider shall be allowed to Brand the property but specifically mention below its branding – “Owned by: Government of Himachal Pradesh”. The Service Provider shall not be allowed to do any third party advertising / branding on the project site, except with prior written approval of the Authority in accordance with the provisions stipulated in the Operation, Management and Maintenance Agreement.

#### **7.6 Implementation Period**

The Service Provider shall complete the implementation of all the 3 facilities as per Minimum Operations Requirements and Scope of Work as set out in this RFP within a period of 02 months after

completion of 01 months for Conditions Precedent. Further, the 'Date of Implementation' shall be date on which the implementation activities are completed in specified time line.

### **7.7 Commencement Period**

Service Provider shall commence operations after completion of Implementation Period. The Service Provider shall have the flexibility of commencing operations of individual facilities as and when they are completed and permission to Commence Operations is received from the Competent Authority as per the provisions of the Operation, Management and Maintenance Agreement.

### **7.8 Annual Concession Fee (ACF)**

In consideration of the operational rights of the Project, the Service Provider shall pay to the Authority, an Annual Concession Fee (ACF). The ACF shall be payable from the beginning of 3rd month of the Effective Date and it will be escalated at rate 10% every 3 (three) years. While quoting the ACF in its Financial Bid, the bidders shall take into account the following:

- i. Revenue from Sale of Books
- ii. Revenue from Sale of Food Items
- iii. Revenue from Membership for Book Café facilities such as wi-fi, etc.
- iv. Revenue from Hourly/ Daily Charges payable by Non-Members for use of facilities
- v. Any other Revenue incidental thereto

### **7.9 Agreement Period**

The Agreement Period for Project shall be 10 years from the Effective Date / Appointed Date extendable for 5 years on subject to satisfactory performance of the Service Provider and at the sole discretion of the Authority. The Commercial Operation Date shall not be later than Date of Implementation or any other extension communicated in writing by the Authority. It is to be noted that Implementation Period is a part of the total Agreement Period of 10 years and extensions thereof. In case the Service Provider is able to commence Commercial Operations earlier than the scheduled Commercial Operations Date (COD), the Service Provider would have the right to revenues for such period. In case the Service Provider fails to commence Commercial Operations on the scheduled Commercial Operations Date (COD), any delay shall result in reduction in effective revenue generating years for the Service Provider besides and without prejudice to other rights of the Authority to impose penalties for delay and recover damages as per the provisions of the Operation, Management and Maintenance Agreement. Further, if the Implementation Period is extended due to reasons attributable to the Authority or due to Force Majeure Events, the Agreement Period shall be extended by the duration equivalent to the subsistence of such event.

### CHECKLIST OF SUBMISSIONS

S. No.	Enclosures to the Bid	Status (Submitted/ Not Submitted)	Comments if any
1.	Demand Draft of Rs. 10,000/- (Rupees Ten Thousand Only) +Applicable GST as Bid Document Fee		
2.	Bid Security of Rs 3 lakh (Rupees Three Lakh Only)		
3.	RFP document each page duly signed by the Authorized Person is to be returned acknowledging the terms and conditions thereof		
4.	Appendix I: Letter comprising the Bid		
	Annexure I: Details of Bidder		
	Annexure II: Technical Eligibility of Bidder (A): Copy of PAN and GST No. and other Incorporation Documents (B): Format for Development Experience (C) :Format for Operational Experience		
	Annexure III: Financial Eligibility of the Bidder		
	Annexure IV: Statement of Legal Capacity		
	Appendix II: Format for Power of Attorney for Signing of Bid		
	Appendix III: Deleted		
	Appendix IV: Deleted		
	Appendix V: Bank Guarantee for Bid Security		
	Appendix VI: Guidelines of the Department of Disinvestment		
	Appendix VII: Self – Undertaking		
	Appendix VIII (A): Covering Letter for Financial Bid		
	Appendix VIII (B): Financial Bid		
5.	Appendix IX: Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs) as per format given in Appendix-IX shall be submitted by the Bidder with the Bid duly signed by Authorised signatory & shall be part of the Operation, Management and Maintenance Agreement.		

**APPENDIX I: LETTER COMPRISING THE BID**

To

**The General Manager**

Himachal Pradesh Infrastructure Development Board (HPIDB) New Himrus Building, Circular Road  
Shimla – 171 001

**Sub: Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode**

Dear Sir,

1. With reference to your RFP document dated ....., I/We, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional in all respects.
2. I/ We acknowledge that HPIDB will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid project, and we certify that all information provided in the Bid and in Annexure 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 Operation, Management & Maintenance of the aforesaid Project.
4. I/ We shall make available to HPIDB any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of 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. We certify that in the last 3 (three) years, we/ or our Associate(s) have neither failed to perform on any contract, as evidenced by imposition of a penalty 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:
  - i. I/ We have examined and have no reservations to the RFP document, including any Addendum issued by HPIDB.
  - ii. I/ We do not have any conflict of interest in accordance with Clauses 2.2(iii) of the RFP;

- iii. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section on Fraud & Corrupt Practices of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with HPIDB or any other public sector enterprise or any government, Central or State;
  - iv. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section on Fraud & Corrupt Practices 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;
  - v. I/ We hereby certify and confirm that in the preparation and submission of this Bid, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive, restrictive or monopolistic trade practice;
  - vi. I/ We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid; and
  - vii. I/ We are not barred by HPIDB, or any state government or any of their agencies from participating in similar projects.
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.
9. I/ We believe that we/ satisfy(s) the Cash Flow and Net Worth criteria and meet(s) the requirements as specified in the RFP document.
10. Deleted
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ or any of our Associate(s) 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/ our Associate(s) 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 / our Associate(s) or against our CEO or any of our Directors/ Managers/ Employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for

qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VI thereof.

15. 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 guidelines referred to above, we shall intimate HPIDB of the same immediately.
16. I/ We hereby submit the Statement of Legal Capacity as per format provided at Annexure IV: Statement of Legal Capacity with this Letter Comprising the Bid.
17. I/ We hereby submit the Power of Attorney for signing of Bid as per format provided at Appendix II: Format for Power of Attorney for signing of Bid of the RFP, is also enclosed.
18. I/We, hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by HPIDB in connection with the selection of Bidders, 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.
19. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
20. I/ We certify that in terms of the RFP, my/our Net worth is INR..... (INR. in words) and we have positive cash flows over 3 of the last 5 financial years and meet the Eligibility Criteria as mentioned in Clause 2.2.1 of this RFP document.
21. We agree and undertake to be jointly and severally liable for all the obligations of the Service Provider under the Operation, Management and Maintenance Agreement till Implementation date.

In witness thereof, I/We submit this Bid under and in accordance with the terms of the RFP.Yours

faithfully,

Date:

Signature, Name and Designation of the Authorized Signatory

Place:

Name and Seal of the Bidder

**Annexure I: Details of Bidder**

1. (a) Name:
- (b) Country of incorporation/ registration:
- (c) Address of the Corporate Headquarters and its BranchOffice(s), if any, in India:
- (d) Date of Incorporation and/ orCommencement of Business:
2. Brief description of the entity including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of Individual(s) who will serve as the Point of Contact/ Communication for HPIDB:
  - a. Name:
  - b. Designation:
  - c. Entity:
  - d. Address:
  - e. Telephone Number:
  - f. E-Mail Address:
  - g. Fax Number:
4. Particulars of the Authorized Signatory of the Bidder:
  - a. Name:
  - b. Designation:
  - c. Address:
  - d. Phone Number:
  - e. Fax Number:
5. Information required from the Bidder regarding debarment/ penalty/ liquidated damages:

S. No.	Criteria	Yes	No
1.	Has the Bidder or any entity controlled by them, from participating in any Project (DBFOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/ paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last 3 (three) years?		

6. A statement by the Bidder or any of their Associate(s) disclosing material non-performance or contractual noncompliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Date:

Signature,

Name and Designation of the Authorized Signatory Place:

Name and Seal of the Bidder



**Annexure II: Technical Eligibility of Bidder**

**(A)**

**Format for PROJECT EXPERIENCE**

<b>Project Name and Location</b>	<b>Seating Capacity</b>	<b>Years of Operation</b>	<b>Whether managed on own or through sub-contract</b>	<b>Project Cost</b>

**Note:**

1. Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate(s)
2. In case credit is claimed for an Associate(s), necessary evidence to establish the relationship of the Bidder with such Associate(s), in terms of Clause 2.2.7, shall be provided.
3. The date of commencement and completion of the project and Investment made on the Project needs to be certified by the Statutory Auditor of the Bidder.

This is to certify that \_\_\_\_\_ (Name of the Bidder) has promoted and developed \_\_\_\_\_ (Title and nature of the Projects) with a total investment of INR. \_\_\_\_\_ Crores.

We further certify that the Project was commissioned on \_\_\_\_\_ (Date) and completed on \_\_\_\_\_ (Date) and \_\_\_\_\_ (Name of the Bidder) held \_\_\_\_\_ % of the equity capital in the Project as on the date of commissioning.

Signature of the Statutory Auditors  
(With seal and registration no)

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Designation) \_\_\_\_\_

(Entity) \_\_\_\_\_

(Date) \_\_\_\_\_

(B)

**Format for  
OPERATION, MANAGEMENT & MAINTENANCE EXPERIENCE OF ELIGIBLE PROJECT**

S. No.	Project Name and Location	Seating Capacity (if applicable)	Project Cost (Cr).	Whether involves any food service? (Yes/No)	Years of Project Operation
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					

**Note:**

1. Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate(s)
2. In case credit is claimed for an Associate(s), necessary evidence to establish the relationship of the Bidder with such Associate(s), in terms of Clause 2.2.7, shall be provided.

This is to certify that \_\_\_\_\_ (Name of the Bidder) has operated \_\_\_\_\_ (Title and nature of the Projects) from the year \_\_\_\_\_ to Year \_\_\_\_\_.

Signature of the Statutory Auditors  
(With seal and registration no)

(Signature) \_\_\_\_\_

(Name) \_\_\_\_\_

(Designation) \_\_\_\_\_

(Entity) \_\_\_\_\_

(Date) \_\_\_\_\_

**Annexure III: Financial Eligibility of Bidder**

**FORMAT FOR FINANCIAL DATA**

**1. Cash Flow related data**

*All figures in INR Cr.*

Description	Past five Financial years ( Audited accounts)				
	Year	Year	Year	Year	Year
Operating Cash Flow	_____	_____	_____	_____	_____
Net Cash Flow					

**2. Net Worth related data for the preceding financial year**

*All figures in INR Cr.*

Description	Amount (in INR Cr.)
Subscribed Share Capital	
(add) Paid up Share Capital	
(add) Free Reserves	
(Subtract) (Revaluation reserves + Miscellaneous Expenditure+ Expenditure not written off+ accrued liabilities + accumulated losses)	
<b>Net-worth</b>	

\* Details of the items included in the non-cash expenses have to be provided.

**Note:**

1. Audited Balance Sheets, Financial Statements and Annual Reports (where the Bidder is a Company) and Profit & Loss statements, ITRs of the Bidder / or of an Associate(s) if relying on the financial credentials of an Associate(s) for the purpose of qualification) at the closing of the preceding Financial Year, before the Bid Due Date shall be enclosed. The financial statements shall:
  - a. reflect the financial situation of the Bidder and its Associate(s) where the Bidder is relying on its Associate's financials;
  - b. be audited by a Statutory Auditor;
  - c. be complete, including all notes to the financial statements; and
  - d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. The Bidder shall provide an Auditor's certificate/ practicing Chartered Accountant certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth;
3. For the purposes of this RFP the term Net Worth means following:
  - a. **"Net Worth" for company shall mean** the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting 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.
  - b. **Net Worth for Partnership Firm would mean:** [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]
  - c. **Net Worth for Individual/Sole Proprietorship would mean:** Total Assets- Total Liabilities

Signature:.....

Name: .....

Designation: .....

Name of Bidder: .....

Stamp/ seal: .....

Date: .....

**Annexure IV: Statement of Legal Capacity**

*(On the letterhead of the Bidder)*

Ref.

Date:

To

**The General Manager**

Himachal Pradesh Infrastructure Development Board (HPIDB) New Himrus Building, Circular Road  
Shimla – 171 001 Dear Sir,

We hereby confirm that we/ (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP.

We have agreed that \_\_\_\_\_ (insert individual's name) will act as our representative and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

Authorized Signatory For and on behalf of

\*Please strike out whichever is not applicable.

**APPENDIX II: FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF BID**

*(On a Non-Judicial Stamp Paper of appropriate value)*

**POWER OF ATTORNEY**

Know all men by these presents, We \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), \_\_\_\_\_ son/daughter/wife \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is [presently employed with us 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 to HPIDB for the "**Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode**" (the "**Project**") proposed by the \_\_\_\_\_ (the "Authority") 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 and/ or the Authority, representing us in all matters before HPIDB and/ or the Authority, signing and execution of all contracts including the Operation, Management and Maintenance Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with HPIDB and/ 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 Operation, Management and Maintenance Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully 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 \_\_\_\_\_, 20\*\*

For \_\_\_\_\_  
(Signature)

(Signature, name, designation and address)

Witnesses:

1.

[Notarized]2.

Accepted

\_\_\_\_\_  
(Signature)

(Name, Title and Address of the Attorney)

**Note:**

- *To be executed by the sole Bidder.*
- *The Power of Attorney to bear proof of payment of stamp duty in accordance with the jurisdictional stamp legislation.*
- *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 resolution/ power of attorney in favor 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 in India, the notarization is to confirm that the document was executed in the presence of a notary.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries conforming Apostille certificate.*



**APPENDIX III: DELETED**

HPIDB-Website 31.08.2023  
Revised RFP Document-Book Cafes

**APPENDIX IV: DELETED**

HPIDB-Website 31.08.2023  
Revised RFP Document-Book Cafes

## APPENDIX V: Bank Guarantee for Bid Security

B.G. No.

Dated:

1. In consideration of you, Himachal Pradesh Infrastructure Development Board, having its office at New Himrus Building, 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.....(a \_\_\_\_\_ registered under the relevant laws of India) and having its registered office at ..... (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), for the RFP for **"Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, 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 operation, management and maintenance 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, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to HPIDB an amount of \_\_\_\_\_ (hereinafter referred to as the "Guarantee") 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 fulfilment 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 amounts 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. 3.00 Lakh (Rupees Three Lakh 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 inclusive of a 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.

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 fulfilment 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 fulfilment 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 unrealized.
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. 3.00 Lakh** (Rupees Three Lakh 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)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

## **APPENDIX VI: GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT**

*(To be signed & submitted along with the Bid)*

No. 6/4/2001-DD-II Government of India

Department of Disinvestment

Block 14, CGO Complex  
New Delhi. Dated 13th July, 2001.

### **OFFICE MEMORANDUM**

**Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the Process of Disinvestment.**

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal

against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

- e. The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- f. Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- g. Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**APPENDIX VII: SELF UNDERTAKING**

*(On Letter Head of the Bidder)*

Ref.

Date:

To  
The General Manager  
Himachal Pradesh Infrastructure Development Board (HPIDB)  
New Himrus Building, Circular Road,  
Shimla – 171 001

**Sub: Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode**

Dear Sir,

I/We (Name of the Bidder) hereby take that I/We (Name of the Bidder) have not been debarred/blacklisted/terminated by any Central Government/ State Government/ Statutory Authority or Public Sector Undertaking (PSU).

Yours faithfully

(Signature, name and designation of the authorized signatory)

For and on behalf of .....



**APPENDIX VIII (A): COVERING LETTER FOR FINANCIAL BID**

Date: \_\_\_\_\_

To

**The General Manager**

Himachal Pradesh Infrastructure Development Board (HPIDB) New Himrus Building, Circular Road, Shimla – 171 001

**Sub: Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode**

Dear Sir,

I/We, ..... (Bidder's name) herewith enclose the Financial Bid for selection of our firm as an Agency for above.

I/We agree that this offer shall remain valid for a period of 180 (One Hundred and Eighty) days from the Bid Due Date or such further period as may be mutually agreed upon.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

**APPENDIX VIII (B): FINANCIAL BID**

**(TO BE SUBMITTED IN A SEPARATE SEALED ENVELOPE)**

<b>S. No.</b>	<b>Project/Name</b>	<b>First Year ACF (in INR)</b>	<b>First Year ACF (in Words)</b>
1.	Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, Himachal Pradesh on PPP Mode.		

Authorized Signature:

Name: .....

Designation .....

Name of firm: ...

Address.....

**Note:**

1. The rate quoted above should be exclusive of all taxes.
2. All payment shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.
3. The financial bid shall not include any conditions attached to it and any such conditional financial bid shall be rejected summarily.
4. The ACF quoted above shall be increased at the rate of 10% every 3 (three) years as per the provisions of this RFP and DCA.

**APPENDIX IX: CERTIFICATE REGARDING COMPLIANCE WITH RESTRICTIONS UNDER RULE 144 (XI) OF THE GENERAL FINANCIAL RULES (GFRs)**

**The General Manager**

Himachal Pradesh Infrastructure Development Board (HPIDB) New Himrus Building, Circular Road, Shimla – 171 001

**Sub: Selection of Service Provider for Operation, Management and Maintenance of Book Café's Constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla, 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 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 Authorized Signatory)

Place:

(Name and Designation of the Authorized Signatory)

(Name and Seal of the Bidder)

**Note:**

1. Wherever applicable, evidence of the valid registration of the Competent Authority shall be attached.
2. 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.

**APPENDIX X: SITE PLAN, LAYOUTS AND DRAWINGS**

HPIDB-Website 31.08.2023  
Revised RFP Document-Book Cafes



# **DRAFT OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT**

**FOR**

**Selection of Service Provider for Operation,  
Management and Maintenance of Book Cafés  
constructed at Chhota Shimla, Chaura Maidan and New  
Shimla, Distt. Shimla Himachal Pradesh on PPP mode.**

**(National Competitive Bidding)**

**AUGUST, 2023**

**ISSUED BY:**

**HIMACHAL PRADESH INFRASTRUCTURE DEVELOPMENT BOARD (HPIDB)  
NEW HIMRUS BUILDING, CIRCULAR ROAD,  
SHIMLA-171001 (H.P.)**

**ON BEHALF OF:**

**MUNICIPAL CORPORATION SHIMLA (MC SHIMLA)  
Shimla Municipal Corporation, Old Judicial Complex, Near DC Office,  
The Mall Shimla, Himachal Pradesh – 171001**

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Selection of Service Provider for Operation, Management and Maintenance of Book Cafés constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

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## OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT

THIS OPERATION, MANGEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023 at \_\_\_\_\_;

### BETWEEN

**Municipal Corporation Shimla** (hereinafter referred to as the “Authority”/ “MC Shimla”, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **First Part**;

### AND

M/s. -----[insert the name of the Service Provider], a Company incorporated under the Companies Act, 2013, and having its registered office at ----- [insert address of the registered office], acting through ----- its ----- [designation], duly authorized in this behalf by way of Power of Attorney dated -----(hereinafter referred to as the “Service Provider” which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **Second Part**;

hereinafter individually referred to as “Party” and together referred to as “Parties”.

### RECITALS:

- A. WHEREAS** the Authority is the rightful owner of the Book Cafés in Shimla, Himachal Pradesh as marked in Schedule I (hereinafter referred to as “Book Cafés” or “Project Site” or “Site”) and intends to undertake the Operation, Management and Maintenance of Book Cafés constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.
- B. AND WHEREAS** with an objective to seek private sector participation in the *Operation, Management and Maintenance of Book Cafés* of the aforesaid Project, the Authority through Himachal Pradesh Infrastructure Development Board (“HPIDB”) undertook the process of selection of a suitable Service Provider through competitive bidding, after issuing a Request for Proposal document (the “RFP”) dated \_\_\_\_\_ inviting Bids from prospective Bidders to implement the said Project, containing *interalia* the minimum qualification for a Bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project. Upon detailed evaluation of the submitted Bids, the Authority had accepted the Financial Bid of the Selected Bidder (sole applicant as the case may be) and issued a Letter of Award (“LoA”) vide Letter No. \_\_\_\_\_ dated \_\_\_\_\_ to the Selected



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Bidder requiring *inter alia* the execution of this Agreement within 30 (thirty) days of issuance thereof.

- C. **AND WHEREAS** the Service Provider/Selected Bidder has furnished to the Authority, Performance Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ 2023, for an amount of Rs. (Rupees \_\_\_\_\_ Only) drawn on \_\_\_\_.
- D. **AND WHEREAS** the Service Provider/ Selected Bidder acknowledges and confirms that it has undertaken due diligence and audit of all aspects of the Project Site, Project Assets and the Project including technical and financial viability, legal due diligence, demand parameters and forecast, and on the basis of its independent satisfaction hereby accepts and undertakes to implement the Project at its own cost and expense in accordance with the terms and conditions of this Operation, Management and Maintenance Agreement.
- E. **AND WHEREAS** the Service Provider hereby accepts and undertakes to implement the Project in accordance to the provisions of this Operation, Management and Maintenance Agreement.

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

## ARTICLE 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Operation, Management and Maintenance 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:

1. **“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
2. **“Act”** means The Companies Act, 1956/2013, read in context with the manner of its usage in this Agreement.
3. **“Operation, Management and Maintenance Agreement”** or **“Agreement”** means and includes this signed Operation, Management and Maintenance Agreement (including the Schedules of the Operation, Management and Maintenance Agreement, the “Letter of Award” issued by the Authority, the written clarification(s), addenda, amendments, etc. to the RFP Document issued to the Bidders and all other documents/papers attached as annexure).
4. **“Agreement Date”** means the date of execution of this Operation, Management and Maintenance Agreement.
5. **“Operation, Management and Maintenance Agreement Period”** or **“Agreement Period”** is the period of 10 (ten) years extendable further by a period of 5 (Five) years, at the sole discretion of the Authority for which this Project is granted, commencing from the Compliance Date. Provided further that, the Service Provider is not in default of any of its obligations under the Agreement, is operating, managing and maintaining the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation, Management and Maintenance Agreement and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project.
6. **“Affected Party”** shall have the meaning set forth in Article 27.1.
7. **“Annual Concession Fee”** means the fee as defined in Article 5.1 of the Operation, Management and Maintenance Agreement.
8. **“Applicable Laws”** means all laws which are applicable to the Project and/or the Service Provider extending to the State of Himachal Pradesh, having been enacted or brought into force by Government of India (GoI) or Government of Himachal Pradesh (GoHP) including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.

9. **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Service Provider under Applicable Laws during the subsistence of this Agreement and refer **Schedule V** of this Agreement.
10. **“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Authority, Secretariat for Industrial Assistance, Reserve Bank of India and any other regulatory authority, as may be applicable.
11. **“Appointed Date” or “Effective Date”** means the date on which every Condition Precedent shall have been satisfied or waived off by the Authority, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period.
12. **“Associates”** means in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
13. **“Authority” or “MC Shimla”** means Municipal Corporation of Shimla.
14. **“Authority’s Event of Default”** shall have the meaning ascribed to it in Article 22.2.
15. **“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crores (Rupees One Thousand Crore only).
16. **“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of Authority / MC Shimla and furnished by the Service Provider to Authority for guaranteeing the due performance of the obligations of the Service Provider under this Agreement.
17. **“Bank Rate”** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
18. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Service Provider in response to the Request for Proposals in accordance with the provisions thereof.
19. **“Business Day”** means a day on which banks are generally open for business in the state of Himachal Pradesh in India.

20. **“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Selected Bidder together with its Associates, in the total Equity to decline below (i) 100% (one hundred percent) for a period until the 5<sup>th</sup> (fifth) anniversary of the Commercial Operations Date (i.e. the Date of Commencement of Commercial Operations or **“COD”**);

21. **“Clearance(s)”** means, as on the date of execution of this Agreement, any and all consents, no-objections, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.

22. **“Change in Laws”** means the occurrence of any of the following after the date of Bid:

- a. the enactment of any new Indian law as applicable to the State;
- b. the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
- c. the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid; and
- d. a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of 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 date of Bid; or any change in the rates of any of the Taxes that have a direct effect on the Project.

23. **“Commercial Operation Date”** or **“COD”** means the date on which the Authority issues written permission for commencement of Operations, for the Project or part thereof is ready for its Commercial Operations.

24. **“Competent Authority”** 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 Service Provider under or pursuant to this Operation, Management and Maintenance Agreement.

25. **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Authority or Service Provider under Article 4.3.

26. **“Condition Precedent”** means the conditions set out in Article 4 hereof.

27. **“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 later to cure the breach or default specified in such notice;

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- 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 Service Provider requires any reasonable action by the Service Provider that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.

28. **“Damages”** shall have the meaning set forth in Sub-article (xiv) of Article 1.2.

29. **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 (three hundred and sixty five) days or 366 (three hundred and sixty six) days in case of leap year, as the case may be.

30. **“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 to the Service Provider, and any modification, extension or replacement thereof from time to time in force.

31. **“Dispute”** shall have the meaning set forth in Article 28.1.

32. **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 28.

33. **“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 Service Provider related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.

34. **“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.

35. **“Event of Default”** means the Service Provider Event of Default and/or Authority Event of Default, as the case may be.

36. **“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Service Provider for meeting the equity component of the Total Project Cost, and for the purposes 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;

37. **“Financing Agreements”** or **“Financing Documents”** means the documents/ agreements executed

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by the Service Provider in respect of Financial Assistance to be provided by the Lenders to the Service Provider by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost and includes any amendments or modifications made to it;

38. **“Financial Model”** means the financial model adopted by Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.

39. **“Financial Year”** means the year commencing from 1<sup>st</sup> April of any calendar year to the 31<sup>st</sup> 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 31<sup>st</sup> March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the Transfer Date.

40. **“Financing Package” or “Financing”** means the financing package of the Project furnished by the Service Provider indicating the Total Project Cost and the means of financing thereof.

41. **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 27.

42. **“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 Service Provider and in operation and maintenance of the Facilities in accordance with this Operation, Management and Maintenance Agreement, Applicable Laws, and Clearances, reliability, safety, environment protection, economy and efficiency.

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

44. **“Gol”** means the Government of India.

45. **“Government Instrumentality”** means any department, division or sub-division of the Gol or GoHP and includes any commission, board, authority, agency or municipal and other local authority or statutory body including the Panchayat under the control of the Gol or the GoHP, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Service Provider under or pursuant to this Agreement.

46. **“Gross Revenue” or “Gross Annual Revenue” or “Annual Gross Revenue”** for any year shall mean the total pretax revenue derived by the Service Provider from the operation, management and maintenance of the Project in terms of this Agreement or from any other permitted or lawful activity as certified by the Statutory Auditors of the Service Provider in that year, including income from commercial or other spaces on account of rent and or license fee from the sub-licensees of every description and kind, and the excess of recovery over direct expenditure incurred in respect of any other service provided by the Service Provider to the guests / visitors / users or the Project Site / Project Facility, which are availed / realized by the Service Provider from an outside party/ies at a consideration BUT shall exclude and be arrived at after deducting the following:-

- i All statutory applicable taxes such as sales tax, entertainment tax, expenditure tax and the like by whatever name called now or in future which the Service Provider has agreed to pay or is bound to pay;
- ii Profit on sale of assets / investments and other assets of capital nature;
- iii Refundable Deposits. However, interest from the refundable deposits shall be calculated at the rate of SBI fixed deposit interest rate prevalent during the year or actual interest earned, whichever is higher and same shall form part of Gross Revenue;
- iv The income earned by licensees and sub-licensees by the use of commercial space or any other specific facility of the Project; and
- v Service charges, if any, other amounts collected for and on behalf of the employees and paid / payable to them; as also recoveries made from the employees towards cost of meals provided to them;
- vi Any stream of revenue, arising from any one or more of the Project Facilities or the Project Site, which is levied / collected and appropriated by the Authority or any entity controlled by the Government (other than the Service Provider).

47. **“Implementation Period”** means a period of 2 (two) months for the Implementation of Book Cafés including all facilities and components as maybe required for the Operation, Management and Maintenance under this agreement and as per the guidelines and regulations, if any, issued and amended by MC Shimla from time to time. The Implementation Period is reckoned from the Compliance Date to the date of issue of Permission to Commence Operations in accordance with the Project Implementation Schedule, if any prescribed, by Authority as per Article 8.6.

48. **“Implementation Completion Date” or “Implementation Date”** means the date by which the overall Implementation of the Project is completed in accordance with the provisions of this Agreement and when the Permission to Commence Commercial Operations is issued by the Authority as per Article 14.1.

49. **“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 24.

50. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article

24.

51. **“Independent Expert”** means any expert person appointed by the Authority in accordance with Article 18.

52. **“Lender(s)”** means financial institutions, banks debenture holders, international credit agencies and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Service Provider under any of the Financing Agreements for meeting all or any part of the Total Project Cost, if allowed by the Authority.

53. **“LoA”** means Letter of Award as per clause 3.6 of RFP.

54. **“Monitoring Committee / Nodal Officer”** shall have the meaning set forth in Article 30.

55. **“Maintenance Requirements”** shall mean the requirements as set out Schedule-III of this Operation, Management and Maintenance Agreement.

56. **“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 agreement ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Operation, Management and Maintenance Agreement, or (c) frustrates a material provisions of this Operation, Management and Maintenance Agreement or any of the Project Agreements.

57. **“OM&M Period”** is the period commencing from the Commercial Operations Date and ending at the Transfer Date.

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

59. **“Performance Standards”** means the standards for the operation and maintenance of the Book Cafés, as set forth in **Schedule III** of the Operation, Management and Maintenance Agreement;

60. **“Performance Security”** means the Security as set out in Article 5.3 from a scheduled bank approved by the Authority.

61. **“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.

62. **“Project”** means, subject to the provisions of this Operation, Management and Maintenance Agreement, (i) Selection of Service Provider for Operation, Management and Maintenance of Book Cafés constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode as per relevant specifications and guidelines as mentioned in relevant Annexures to this Agreement and issued / modified / amended from time to time and as per Acts Rules and Guidelines,



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if any of MC Shimla and issued / modified / amended from time to time, at the Project Site including all activities incidental thereto at the Project Site including but not limited to the furniture, fixtures and equipment, other related facilities installed or affixed and all additions; modification, alterations and extensions thereto as may be effected by the Service Provider from time to time to meet MC Shimla regulations and requirements; (ii) levy, collection, retention and appropriation of the Project Revenues etc.; (iii) insurance of the Project Facilities for the purposes of providing the services on a continuous basis; and (iv) transfer of the project facilities to the Authority at the end of the Agreement Period or on prior termination of the Operation, Management and Maintenance Agreement due to Service Provider's Event of Default or otherwise on 'as is where is basis' as a going concern.

63. **"Project Agreements"** means, collectively, this Operation, Management and Maintenance Agreement, the Financing Documents, hire purchase agreements, sub-license/sub-lease agreements/arrangements, and operation, management & maintenance agreements, in each case as amended, supplemented or otherwise modified from time to time.

64. **"Project Completion Certificate"** means the certificate issued under Article 16.

65. **"Project 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.

66. **"Project Facilities"** or **"Facilities"** means the Project including facilities and amenities to be provided in the Book Cafés as per relevant specifications and guidelines.

67. **"Project Implementation Schedule"** means the Service Provider's Project implementation proposal and its time frame as accepted by the Authority in accordance with Article 8.6.

68. **"Project Insurance"** means the insurance taken out by or on behalf of the Service Provider pursuant to Article 2 and 26 of this Operation, Management and Maintenance Agreement.

69. **"Project Revenues"** means all sources of revenues from the Project as defined in Article 2.3.1.

70. **"Project Site"** or **"Site"** means the constructed sites of Book Cafés in accordance with the Site Plan, Layout and Drawings given by the Authority to the Service Provider, 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 dependencies are to be executed, more particularly delineated in **Schedule I**.

71. **"Project Assets"** means all tangible and intangible assets relating to the Project Site including, but not limited to, (a) rights over the Project Site in the form of license, ~~license~~, right-of-way or otherwise; (b) tangible assets such as civil works and equipment, all buildings, pavements, substructures and superstructures, movement and parking areas, all internal and external services,

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drainage facilities, sign boards, HVAC works, electrical works, equipment, etc.; (c) Project Facilities created on the Site; (d) all rights of the Service Provider under the Project Agreements/Documents; (e) financial assets, such as receivables, security deposits, cash and investments; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project.

72. **“RFP”** means Request for Proposal document issued by the Authority. The term RFP and “Request for Proposal” are synonymous with “Tender Documents”, “Bidding Documents” and “Notice Inviting Bids” (NIB).

73. **“Right of Way”** means the constructive possession of the Project Site on ‘as is where is basis’, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the operation and maintenance of the Project Facilities in accordance with this Agreement;

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

75. **“Schedules”** mean the Schedules to this Operation, Management and Maintenance Agreement.

76. **“Service Provider's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and implementation 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.

77. **“Service Provider's Representative”** means the Person appointed by Service Provider under Article 8.5.

78. **“Statutory Auditor”** means an independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as independent statutory auditor of the Service Provider under the provisions of Act including any statutory modification or re-enactment or replacement thereof, for the time being in force.

79. **“Subcontractor”** means the furnishing contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/ or building/ services or part thereof, as the context may require, to whom the Service Provider contracts or subcontracts the Works in full or part.

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

81. **“Technical Requirements”** means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the implementation of the Project as set forth in the Schedules to this Operation, Management and Maintenance Agreement and any alterations and modifications thereto.

82. **“Temporary Works”** means all temporary works of every kind (other than Service Provider's Equipment) required for the Operation, Management & Maintenance of the Project, services, facilities, and the remedying of any defects relating thereto.

83. **“Termination Date”** means the date on which this Operation, Management and Maintenance Agreement terminates by efflux of time or by issuance of a Termination Notice.

84. **“Termination Notice”** means the communication issued in accordance with this Operation, Management and Maintenance Agreement by a Party to the other Party for terminating this Operation, Management and Maintenance Agreement.

85. **“Termination Payment”** means the amount payable by the Authority to the Service Provider, upon Termination in pursuance of Article 22.3;

86. **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Operation, Management and Maintenance Agreement.

87. **“Total Project Cost”** means the lowest of the following:

- a. The actual capital cost of the Project upon Implementation of the Project and mandatory Project Facilities, as maybe prescribed by the Authority.
- b. Total Project Cost as set forth in the Financing Documents, if any.

88. **“Transfer Date”** means the day immediately following the last day of the Agreement Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Operation, Management and Maintenance Agreement.

89. **“Users”** means any person or group of persons/ individuals/ families who uses the Project Facilities or any part thereof on payment of User Charges.

90. **“User Charges”** means the charges, levies, tariffs, prices, sub-license fees, charges or all sources of revenue or amounts of money by whatever name called levied, demanded, collected, retained and appropriated by the Service Provider from Users or under sub-license or subcontracting arrangements.

91. **“Vesting Certificate”** shall have the meaning set forth in Article 23.4.

92. **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Service Provider.

93. **“Works”** means the operation, management 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 Operation, Management and Maintenance Agreement.

## 1.2 Principles of Interpretation

In this Operation, Management and Maintenance 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 reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- ii. Reference to laws of Government of Himachal Pradesh (the **“GoHP”**), 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 shall have the meaning as defined in this Agreement including the Schedules;
- v. Words importing Person or Parties shall include firms and corporations and any organization 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 Agreement 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, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized 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 (the “**Business Day**”), then the period shall run until the end of next business day; and
- 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. (“**Damages**”)

### **1.3 Measurements and Arithmetic Conventions**

All measurements and calculations shall be in metric system and calculations done in 2 (two) decimals places, with the third digit of 5 (five) or above rounded up and below 5 (five) rounded down.

### **1.4 Ambiguities within Agreement**

1.4.1 Subject to the provisions of Article 1.5.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- i. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- ii. between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- iii. between any two Schedules, the Schedule relevant to the issue shall prevail;
- iv. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- v. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- vi. between any value written in numerals and that in words, the latter shall prevail.

### **1.5 Priority of Documents**

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

- i. this Agreement (including its Schedules);
- ii. the Financial Bid
- iii. the addenda / corrigenda;
- iv. the RFP Document and
- v. all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (i) above shall prevail over the agreements and documents at (ii) above; (ii) above shall prevail over the agreements and documents at (iii) above; (iii) above shall prevail over the agreements and documents at (iv) above and (iv) above shall prevail over the agreements and documents at (v) above.

#### **1.6 General**

Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Service Provider to the Authority and/or the agency or person appointed by the Authority shall be provided free of cost and in 2 (two) copies, and if the Authority and/or the person appointed by the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

## ARTICLE 2: SCOPE OF THE WORK

### 2.1 Scope of the Work

2.1.1 The Scope of the Project (the “Scope of the Work”) shall mean as specified in Schedule III and shall include during the Agreement Period, Operation, Management and Maintenance of the Project:

I. The Service Provider shall undertake all the activities pertaining to and incidental to *Selection of Service Provider for Operation, Management and Maintenance of Book Cafés constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode* including, but not limited to the following:

- i. Taking over of the Project Site on “as is where is basis” and plan, design, finance and upgrade the facility, marketing, providing relevant assets, equipment, clearances/approvals, providing ancillary services and amenities related to the Project as per terms of the RFP, Operation, Management and Maintenance Agreement and Schedules thereof.
- ii. Use of quality materials for Furniture, Furnishings and all Fixtures, etc. to be in accordance with the Industry Standard.
- iii. Provide all equipment and appliances in kitchen and seating areas, IT systems, computers and peripherals, office equipment, OFC connectivity, LED screens, consoles, LED TVs, sofas, tables, chairs, electric kettles, etc.
- iv. Maintaining the standards in accordance with the guidelines, if any issued and amended from time to time by MC Shimla.

II. Besides the above works the Service Provider shall have the following Operation, Management & Maintenance (OM&M) and other Obligations as well:

- i. The Service Provider shall be responsible for seeking and maintaining all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, food license, etc.
- ii. The Service Provider shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the vendors for various installations.
- iii. The Service Provider shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the Implementation phase as well as during the currency of the agreement all relevant insurances as per statutory requirements or otherwise should be in place.
- iv. The Service Provider shall maintain the entire premises in accordance with Good Industry Practice.

- v. The Service Provider shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- vi. Meeting the requirements and norms laid down by the competent authorities regarding maintenance of the Project Facilities, if any.
- vii. Provision for availability of personnel on 12 hours on Reception Area for providing assistance to the guests visiting the Book Cafes, with an ability to communicate in English and Hindi or any other Indian regional language or any foreign language.
- viii. Performance and fulfillment of all obligations of the Service Provider in accordance with the provisions of the Operation, Management and Maintenance Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Provider under the Operation, Management and Maintenance Agreement.

2.1.2 Deleted

2.1.3 Deleted

2.1.4 The Service Provider shall undertake the operation , management and maintenance of Book Cafes in accordance with the provisions of this Operation, Management and Maintenance Agreement and the Schedules hereof.

2.1.5 The Service Provider shall have the right to demand and collect Project Revenues etc. from the sub-licensees/ Users, as per the provisions of the Operation, Management and Maintenance Agreement and the Schedules hereof.

2.1.6 The Service Provider shall be responsible for performance and fulfilment of all other obligations of the Service Provider 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 Service Provider under this Agreement.

2.1.7 The use of standards and specifications for use of material, technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.

For detailed scope of work, refer to Schedule III of this Agreement.

## **2.2 Bye-Laws & Norms**

- i. While undertaking Implementation of the Project, the Service Provider shall adhere to all the Applicable Laws inter alia relevant IS Codes and practices, statutory requirements the



principles of Good Industry Practices and any other norms as applicable from time to time.

- ii. The Service Provider shall be responsible for all the Applicable Permits and the Clearances as may be required for the operation, management and maintenance of the Project. The Project shall be ready for operation after taking all the clearance(s), within 02 (two) months of the Compliance Date / Effective Date.

### **2.3 Revenue Streams**

2.3.1 The Service Provider will be able to recover its investment through various streams of revenue including but not limited to User Charges for using any of the Facilities provided in the Book Cafes (collectively to be called as “**Project Revenues**”).

### **2.4 Deleted**

### **2.5 Deleted**

### **2.6 Nomenclature of the Project**

The Service Provider shall be allowed to Brand the property but specifically mention below its branding – “*Owned by: Government of Himachal Pradesh*”. The Service Provider shall not be allowed to do any third party advertising / branding on the project site except as provided in Article 7.2.1(v).

### **ARTICLE 3: AWARD OF OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT**

#### **3.1 The Operation, Management and Maintenance Agreement**

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 Service Provider and the Service Provider hereby accepts the Agreement for a period of 10(Ten) years followed by an extension of 5 (Five) years subject to satisfactory performance of the Service Provider and at the sole discretion of the Authority (the “**Agreement Period**”) commencing from the Compliance Date / Effective Date including the exclusive right, license and authority during the subsistence of this Agreement, including extension thereof. Provided further that, the Service Provider is not in default of any of its obligations under the Agreement, is operating, managing and maintaining the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation, Management and Maintenance Agreement and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Service Provider undertakes:

- i. to implement the Project as per the Scope of Work as mentioned in Article 2 and Schedule III of this Operation, Management and Maintenance Agreement;
- ii. to enjoy complete and uninterrupted access and Right of Way and Right to Use the Project Site and Project Assets in pursuance of the declaration of license granted in favour of the Service Provider by the Authority;
- iii. to have access and liberty to, operate, manage and maintain the Project Facilities during the Agreement Period in accordance with the provisions of this Operation, Management and Maintenance Agreement & its Schedules hereof. Any upgradation or development done by the Service Provider in form of any structures or fixtures on the Project Site in respect of the Project shall be deemed to be the property of the Authority and the Service Provider relinquishes all its rights in such property in favour of the Authority;
- iv. to enjoy exclusive right and authority to carry out the activities in relation to the Project strictly as specified in the Operation, Management and Maintenance Agreement during the Agreement Period;
- v. To sub-license the use of the Project to the vendors and thereupon determine, demand, levy, collect, enforce, retain and appropriate charges periodically and revise the same in conformity with the prevailing market rates. Within the limitations of statutory provisions of the Applicable Laws and Good Industry Practice, the Service Provider shall make all the efforts to maximize the earnings from the associated operations and to keep the Authority informed of actions taken and results thereof;

- vi. to manage, operate and exercise rights over all or any part of the Project Assets without limitation or restriction other than those expressly set out in this Operation, Management and Maintenance Agreement;
- vii. to fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, subcontractors (the “**Subcontractor(s)**”), agents, advisors and consultants without in any way relieving the Service Provider of its obligations as set out in this Agreement;
- viii. to arrange for all the Applicable Permits and Clearances from the Competent Authorities for the operation, management and maintenance of the Project and the Authority shall in no way be liable for the same. Responsibility of getting all necessary approvals pertaining to Implementation and operation, management and maintenance lies with the Service Provider. Nevertheless, the Authority, without any binding obligation may provide any assistance upon written request from the Service Provider on best effort basis;
- ix. to exercise such other rights as the Authority may determine being necessary or desirable for the purposes incidental and necessary for operating, managing & maintaining the Project; and
- x. to bear and pay all expenses, costs and charges incurred for fulfillment of all the Service Provider’s obligations as set out under this Agreement.
- xi. Nothing contained hereinabove, including the act of granting permission to implement the Project at the designated Project Site shall vest or create any proprietary interest in the Project/Project Land or any part thereof including any permanent fixtures, fittings etc. installed in the Project in favor of the Service Provider or any person claiming through or under the Service Provider. The Service Provider shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project/Project Land/ or any other movable/immovable assets in any manner whatsoever. The Service Provider acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

### **3.2 Actions in Support of the Operation, Management and Maintenance Agreement**

- i. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Operation, Management and Maintenance Agreement.
- ii. The Service Provider shall not be entitled to mortgage any movable / immovable asset, which is a part of the Project Assets, and the Project Site unless specifically permitted by the Authority.
- iii. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement.
- iv. The Authority shall provide assistance and recommendations to the Competent Authorities, including GoI in support of the Service Provider’s applications for Clearances that may be needed from time to time for the implementation of the Project;

Provided that the Service Provider has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

### **3.3 Agreement Period**

3.3.1. The Agreement Period for **“the Project”** shall commence from the Effective Date / Compliance Date and shall extend for a period of **10 (Ten) years** from such date (the **“Agreement Period”**) unless extended in terms of Article 3.3.2 during which the Service Provider is authorized to implement the Project and undertake its operation, management and maintenance the Book Cafés in accordance with the provisions hereof. For the avoidance of doubt, the Operation, Management and Maintenance Agreement Period shall include the Implementation Period.

3.3.2 Not less than 3 (three) months prior to the expiry of the initial Agreement Period of 10 years, upon written request from the Service Provider seeking extension in Agreement Period, the Authority may in its sole discretion consider such request of the Service Provider subject to the conditions that the Service Provider is not in default of any of its obligations under the Agreement, is running the Project in a satisfactory manner and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project. Provided, however, such extension of Agreement Period shall not exceed a period of 5 (five) years. Provided however, any extension in Agreement Period in accordance with this Article 3.3.2 shall be subject to same terms and conditions as contained in this Agreement. Provided further that, not more than 1 (one) extension of 5 (five) years each in the Operation, Management and Maintenance Agreement Period shall be considered by the Authority.

3.3.3. It is hereby made clear that:

- i. In the event of the Agreement Period being extended by the Authority beyond the said period in accordance with the provisions of this Agreement, the Agreement Period shall include the period/ aggregate period by which the project is so extended; and
- ii. In the event of Termination, the Agreement 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 Agreement Period or early termination of this Agreement for any reason whatsoever, all rights given under this Operation, Management and Maintenance Agreement shall cease to have effect and the Project Site, Book Cafés with all the fixtures and other assets as associated with the project on **‘as is where is basis’** shall revert to the Authority as a **“going concern”** without any obligation of the Authority to pay or adjust any consideration or other payment to the Service Provider.

### **3.4 Implementation Period**

3.4.1 The “**Implementation Period**” shall be a period of **02 (two) months** commencing from the Effective Date for the Project. However, it is being clarified here that the Service Provider shall, within the Implementation Period:

- i. Implement the Project at the Project Site and make it fully operational in all respect and all other facilities to the satisfaction of the Authority, from the Commercial Operations Date; and
- ii. Obtain all the necessary applications at its cost and procure all necessary/ mandatory clearances that are required for commencing the operations unconditionally or if subject to conditions then all such conditions have been satisfied in full and such clearances are in full force and effect

3.4.2 In the event that Implementation Date is not achieved within the stipulated period set out in Article 3.4.1, for any reason other than Force Majeure or reasons attributable to the Authority or any Competent Authority, the Service Provider shall, pay to the Authority damages for delay beyond the Implementation Date an amount equivalent to i.e. 0.05% of the Performance Security per day for each day of delay or part thereof until Implementation Date is achieved. Provided that nothing contained in this Article 3.4.2 shall be deemed or construed to authorize any delay by the Service Provider in achieving Implementation Date. The Service Provider shall be liable for replenishing/maintaining the Performance Security to its original amount.

3.4.3 In the event that Implementation Date does not occur within 30 (thirty) days from the Scheduled Implementation Date, the Authority shall be entitled to invoke the Performance Security and to terminate this Agreement for a Service Provider Event of Default in accordance with the provisions of Article 22 hereof. Provided that instead of terminating this Agreement, the Authority may at its sole option extend the time for achieving Implementation date on such terms and conditions as it deems fit in its sole discretion.

#### **ARTICLE 4: CONDITIONS PRECEDENT**

Subject to the express terms to the contrary, limited aspects of the Implementation Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Operation, Management and Maintenance 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 30 (thirty) 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 (the “**Conditions Precedent**”) of the Service Provider.

##### **4.1 Conditions Precedent for the Authority**

The Authority shall:

- i. execute the Declaration of License to operate, manage and maintain in favor of the Service Provider in terms of Article 6.1 provided that the Service Provider shall have furnished a Bank Guarantee to the Authority as Performance Security at the time of signing the Operation, Management and Maintenance Agreement in accordance with the terms hereof. It is however clarified that this Condition Precedent on the part of the Authority shall be fulfilled once all other Conditions Precedent of both the Parties have been met/fulfilled;
- ii. procure for the Service Provider the right to the Project Site and Project Assets, free of all encumbrances;
- iii. ensure that all the obligations with regards to completion of its scope of work as per the provisions of RFP, this Agreement and more specifically with regards to Article 2 and schedules thereof shall be undertaken, completed and complied with before handover of the project site to the Service Provider; and
- iv. approve the concept and design of finishing and furnishing the Book Cafes, and also, give comments on the concept and design submitted by the Service Provider.

##### **4.2 Conditions Precedent for Service Provider**

The Service Provider shall:

- i. Provide an undertaking that all of the Representations and Warranties of the Service Provider set forth in Article 17 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- ii. Provide copies (certified as true copies by an authorized officer of the Service Provider) of the constitutional documents of the Service Provider;
- iii. Provide copies (certified as true by the Director of the Service Provider) of all resolutions adopted by the Board of Directors of the Service Provider authorizing the execution, delivery and performance of this Agreement by the Service Provider;
- iv. Provide from the Indian Legal Counsel of the Service Provider a legal opinion with respect to the authority of the Service Provider to enter into this Agreement and the Project

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Agreements and the Financing Documents and the enforceability of the provisions thereof;

- v. Prepare and submit a Project Implementation Schedule as specified in Article 8.6.1; and
- vi. submit safety plans and procedures as per Article 8.15.

Provided that upon request in writing by the Service Provider, 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 endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 30 (thirty) days of signing the Agreement (Agreement Date) or as mutually agreed between the Parties.

4.3.2 Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance (the “**Certificate of Compliance**”) with Conditions Precedent. The later of the date of issue of Certificate of Compliance to the Service Provider or the Authority shall be the Compliance Date or Effective Date or Appointed Date, whereupon the obligations of the Parties under this agreement shall commence and whereon the Authority shall issue the Certificate of Compliance to the Service Provider.

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

#### **4.4 Non-fulfillment of Conditions Precedent**

4.4.1 In the event that any of the Conditions Precedents relating to the Service Provider have not been fulfilled within 30 (thirty) days of the signing of this Agreement and also, the Authority has not extended or waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Service Provider or persons claiming through or under it.

4.4.2 In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Service Provider or due to Force Majeure, the Authority shall pay to the Service Provider Damages of an amount equivalent to i.e. 0.01% of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 5% of the Performance Security.

4.4.3 In the event that (i) the Service Provider does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within a period of 30 (thirty) Days unless

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failure to fulfill the obligations under Article 4.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Service Provider shall pay to the Authority, Damages of an amount equivalent to i.e. 0.05% (zero point zero five per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 10% of the Performance Security.

- 4.4.4 In the event the Authority has terminated this Agreement under Article 4.4.1. due to non-fulfillment of Conditions Precedent by the Service Provider, the Authority shall not be liable in any manner whatsoever to the Service Provider or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Service Provider.
- 4.4.5 In the event that the Project Site has been delivered to the Service Provider on the 'as is where is basis' prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site and Project Assets shall immediately revert to the Authority, free and clear from any Encumbrances on 'as is where is basis', irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.



## ARTICLE 5: CONSIDERATION TO THE AUTHORITY

### 5.1 Annual Concession Fee (ACF)

- 5.1.1 In consideration of the rights, privileges and interests granted by the Authority to the Service Provider in terms of this Agreement, the Service Provider shall pay to the Authority the Annual Concession Fee (**the “ACF”**) as quoted in its Financial Bid, plus the applicable Tax thereon and GST at the prevailing rates. The Annual Concession Fee shall be subject to increase at the rate of 10% every 3 (three) years, with the first revision falling after 3 years from the First ACF Payment Date.
- 5.1.2 The ACF shall be payable by the Service Provider to the Authority in the manner set forth in the Operation, Management and Maintenance Agreement. These payments shall be made periodically by Demand Draft /NEFT / RTGS in the manner set forth in the Operation, Management and Maintenance Agreement.
- 5.1.3 The first ACF shall be due and payable on a date falling on completion of 02 (two) months from the Effective Date or on Commencement of Operations (Commercial Operations Date), whichever is earlier (**“First ACF Payment Date”**), and accordingly, the Service Provider shall deposit the ACF on or before the same date every year.

*For Illustration, if the Effective Date is 1<sup>st</sup> January 2024 then the 1<sup>st</sup> (first) ACF shall be paid by the Service Provider on or before 1<sup>st</sup> March 2024 and so on. In case COD is 25<sup>th</sup> Feb 2024 then the 1<sup>st</sup> (first) ACF shall be paid by the Service Provider on or before 25<sup>th</sup> Feb 2024 .*

**For avoidance of doubt, the ACF shall be payable from the due date as specified above irrespective of the extension in Implementation Period beyond 02 months.**

- 5.1.4 In the event of delay up to 30 (thirty ) days in payment of ACF by the Service Provider, the Service Provider shall be required to pay to the Authority an interest at the rate of 16% (sixteen percent) per annum on the due and unpaid amount of ACF for the period of delay. In the case of delay beyond 30 (thirty) days, it shall be considered as Service Provider Event of Default.
- 5.1.5 The time prescribed for making payment of the ACF shall be the essence of this Agreement. Non-Payment of the ACF shall be accounted as Service Provider Event of Default and subsequently form a ground for termination of this Agreement.

### 5.2 Adjustment of the Annual Concession Fee (ACF)

The ACF shall not be adjusted for changes in the cost of labour, materials or other matters and there shall be no other implied adjustments for any other reasons whatsoever.

### **5.3 Performance Security**

- 5.3.1 The Service Provider shall, for the performance of its obligations hereunder provide to the Authority, before signing of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum of Rs. 50,00,000/- (Rupees Fifty lakhs Only), in the form set forth in **Schedule-IV** (the "**Performance Security**"). Until such time the Performance Security is provided by the Service Provider pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Service Provider.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Service Provider within the stipulated time period, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **5.4 Appropriation of Performance Security**

Upon occurrence of a Service Provider Event of Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Service Provider Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 45 (forty five) days thereof, replenish, in case of partial appropriation, to its original level of the applicable Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Service Provider shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 22. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Service Provider shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Service Provider Default or to meet any Condition Precedent, and in the event of the Service Provider not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 22.

### **5.5 Release of Performance Security**

The Performance Security shall remain in force and effect for the entire Agreement Period. Upon completion of 6 (Six) months after end of the Agreement Period and thereby, request made by the Service Provider for release of the Performance Security along with the particulars which establish satisfaction of the requirements laid down in the Operation, Management and Maintenance Agreement, the Authority shall release the Performance Security forthwith.

## **ARTICLE 6: RIGHTS AND TITLE OVER THE PROJECT SITE**

### **6.1 Transfer of Project Site on License**

The Authority shall execute a “**Declaration of License**” in respect of the Project Site as delineated in Schedule I, in favour of the Service Provider in the format prescribed in Schedule XII. Simultaneous with the execution of the Declaration of License, the Authority shall grant to the Service Provider, access to the Project Site and Project Assets and transfer of interest including the existing infrastructure thereat (which the Authority decides to give to the Service Provider as the terms of this Agreement), pursuant to completion of a joint inspection and verification of the inventory and records of materials/ assets existing in the Property, on “**as is where is basis**”, free from all Encumbrances for the limited purposes of this Project. The Declaration of License shall run co-terminus with this Agreement.

### **6.2 Use of the Project Site, Project Assets and Peaceful Possession**

6.2.1 The Service Provider, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site and Project Assets during the Agreement Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. The Service Provider shall not use the Project Site or Book Cafés for any other purpose not intended herein.

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

6.2.3 The Service Provider is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Project Site premises granted to the Service Provider.

### **6.3 Access rights of the Authority and others**

6.3.1 The Service Provider shall allow free access to the Project Site at all times for the authorized representatives of the Authority and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Service Provider shall provide to such person’s reasonable assistance necessary to carry out their respective duties and functions.

#### **6.4 Property Tax**

Although the property tax on the Project Site is payable by the Authority as owner of the Site; however, under applicable laws the Service Provider is liable to pay any such taxes arising out of usage of Project Site i.e. for any non-residential/ commercial purposes or on the built-up area, which is under the occupation of Service Provider shall not be reimbursed or payable by the Authority. The Service Provider shall bear any such property taxes, house taxes, municipal taxes etc. as levied by Competent Authorities. Any such taxes payable by the Service Provider under Applicable Laws, for use of the Project Site, shall not be reimbursed or payable to the Service Provider.

## **ARTICLE 7: OBLIGATIONS OF THE AUTHORITY**

### **7.1 General Obligations**

It shall be the Authority's obligation to ensure that the following are made available or executed by the Authority:

- 7.1.1 Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the operation, management and maintenance of the Book Cafés except as may be provided in this Operation, Management and Maintenance Agreement.
- 7.1.2 All litigation involving the Project Site, prior to the date of issue of Certificate of Compliance and wherein the actions have been filed against the Authority, shall be contested solely by the Authority. The Service Provider shall in no way be held responsible or liable as a reason therefore. The Authority shall indemnify the Service Provider and shall hold it free from any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding Project Site.

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 Service Provider 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.

### **7.2 Obligations of Authority regarding Project Site**

- 7.2.1 The Authority agrees to provide support to the Service Provider 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. the Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.1, including any compensation required to be paid for acquisition of such Project Site. Further, the Authority shall not hold Service Provider responsible for all costs, expenses or charges incurred in making available the Project Site free from all Encumbrances on 'as is where is basis' to the Service Provider.
  - ii. the Authority shall, upon written request of the Service Provider, assist the Service Provider in getting permissions and exemptions as may be required under Applicable Laws and regulating land use as applicable in State of Himachal Pradesh so as to facilitate the Service Provider in enjoying complete and uninterrupted Right of Way in respect of the Project Site on "as is where is basis" and holding the area of land comprising of the Project Site.

- iii. the Authority shall ensure that from the date of the Certificate of Compliance and till the completion of the Agreement Period, the Service Provider has access to the Project Site for the purpose of carrying out the Service Provider's obligations under this Agreement.
- iv. if the Service Provider suffers delay or incurs cost as a direct result of failure on the part of the Authority to perform its obligation under this Article 7.2, the Service Provider shall give notice of the same to the Authority. Upon receipt of such notice Authority shall proceed to take remedial measures and make compensatory adjustments in the Agreement Period in accordance with Article 7.3.
- v. the Authority may grant to the Service Provider right to advertise and set up and display hoardings, billboards and other information panels at the Project Site 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 concerned Authorities;
- vi. the Authority shall ensure that all the obligations with regards to completion of its scope of work as per the provisions of RFP, this Agreement and schedules thereof shall be undertaken, completed and complied with before handover of the project site to the Service Provider.

### **7.3 Authority's Determination**

- 7.3.1 When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Agreement Period, it shall consult with the Service Provider in an endeavor to reach an agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the Agreement Period. The Authority's determination on value, cost and adjustment of the Agreement Period shall be intimated to the Service Provider within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- 7.3.2 If the Service Provider disputes Authority's determination of value, cost or adjustment to the Agreement Period, the matter shall be referred to an **"Independent Expert"** (Expert) to be appointed by the Authority, in accordance with the following provisions:
  - i. If the Service Provider disagrees with the value, cost or adjustment determined by the Authority, it shall give a notice in writing of its intention to the Authority, as soon as may be reasonable and in any event within 15 (fifteen) 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 Expert of such dispute.
  - ii. The Independent Expert upon receipt of a notice under this Article shall require the Authority to furnish to the Independent Expert all the reasons, records and documents based upon which Authority had determined the value, cost or adjustment.

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- iii. The Service Provider shall permit the Independent Expert to inspect all records and shall supply him with copies thereof and with all such further information as and when the Independent Expert shall so require.

7.3.3 Except Termination Payment or else as expressly provided for in this Operation, Management and Maintenance Agreement, any payments to the Service Provider by the Authority shall be made through the mechanism of adjustment to the Agreement Period or payments to the Authority.

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## ARTICLE 8: OBLIGATIONS OF THE SERVICE PROVIDER

### 8.1 General Obligations

8.1.1 The Service Provider shall observe, undertake, comply with and perform the following obligations, 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 Agreement;
- ii obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority, for infrastructure facilities including power, water supply, drainage & sewerage, firefighting, telecommunications etc., as and when they may be required, for the Service Provider and its employees to perform their obligations under this Agreement;
- iii 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 Subcontractors;
- iv Provide an undertaking that any financing assistance availed by the Service Provider will only be the sole liability of the Service Provider and that it shall have no bearing or financial implications either on the Project revenues, Project Facilities or the Project Assets;
- v carry out the Works strictly in accordance with the provisions of this Agreement, the Technical Requirements, Performance Standards, the Project Implementation Schedule and the Schedules of this Agreement, and all works not mentioned in this Agreement but which may be inferred to be necessary for safe, reliable and efficient implementation and operation of the project;
- vi undertake to complete the Implementation within the specified Implementation Period, provided that the Service Provider shall not be in breach of this Agreement if any such non-fulfillment or the delay of its obligation are caused by: (i) the occurrence of an event of Force Majeure or (ii) any other act or omission of the Authority in contravention of its obligations under this Agreement;
- vii ensure that the Facility shall be used for the intended purpose only as agreed between the Parties;
- viii shall have the right to sub-license the use of designated area of the Project, during the subsistence of this Agreement only with a clear stipulation that sub-license granted shall terminate simultaneously with the termination of this Agreement including any sooner determination of the Agreement Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall



- specifically stipulate this covenant of termination of the sub-license rights and further that the sublicensee shall not have any claim whatsoever against the Authority for any such termination. The Service Provider shall prepare a draft standard format of the sub-license arrangement which the Service Provider will be required to sign with the sub-licensee for the use of the designated area of the Project. The Service Provider shall furnish the draft of such agreement/ arrangement to Authority for its approval. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest. The Service Provider shall enter into sub-license arrangements as per the standard format with the covenants stipulated by the Authority as the confirming party to the same and the Service Provider shall not incorporate or bring change in 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, prior written consent of the Authority shall be taken before entering into any such agreement with sub-licensees;
- ix ensure that the use of the Project Site is restricted to the Article 2 and Schedule III of this Agreement.
- x carry out its obligations/duties with regard to the Operation, Management and Maintenance of the Project in accordance with the Schedules to this Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is implied by this Agreement, or arises from any obligation of the Service Provider, and all duties not mentioned in this Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
- xi Operation , Management and Maintenance of the Project and all its components, for avoidance of doubt the Project components, if any, retained by the Authority shall also be maintained by the Service Provider, including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and shall remedy any defects during the Agreement Period. The Service Provider shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation and maintenance (including remedying of defects);
- xii be responsible from the date of issuance of the Certificate of Compliance for all liabilities arising out of Operation , Management and Maintenance of the Project;
- xiii take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods, operation and maintenance of the Project, irrespective of any approval or consent by the Authority;
- xiv 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;

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- xv be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance;
- xvi ensure that no structural damage is caused to the existing building(s) and other permanent structures at the Project Site as a result of Service Provider's activities or any of its agents, contractors, tenants etc.;
- xvii pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, services tax, stamp duty, registration charges and any other legal documentation charges, if any, in respect of Book Cafes including Project Site, as leviable;
- xviii duly supervise, monitor and control the activities of Contractors, subcontractors, their employees and agents under their respective Project Agreements as may be necessary;
- xix ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Service Provider's obligations under this Agreement;
- xx obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- xxi take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;
- xxii not to permit any contractor, subcontractors or other person, claiming through or under the Service Provider, to create or place any Encumbrances or security interest (the "**Security Interest**") over all or any part of Project Site or the Project Assets (the "**Project Assets**") or on any rights of the Service Provider therein or under this Agreement, save and except as expressly permitted in this Agreement;
- xxiii ensure that such Project Site remains free from all Encumbrances, encroachments and trespass during the entire Agreement Period;
- xxiv provide all assistance to the Independent Expert/ independent auditor/ arbitrator, as applicable and as it may require for the performance of their duties and services;
- xxv at all times, to afford access to the Project Site to the authorized representatives of Authority, other persons duly authorized by any governmental agency having jurisdiction over the Project, to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice;
- xxvi remain solely and primarily responsible to Authority for observance of all the provisions of this Agreement on behalf of the Service Provider, its employees and representatives and further on behalf of the sub- licensees, their employees and agents and any person acting under or for and on behalf of the Service Provider or the sub-licensees, the sub-contractor as fully as if they were the acts or defaults of the Service Provider, its agents or employees;
- xxvii remain liable for and to 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 judgments arising out of the failure of the Service Provider to discharge its obligations under this Article 8.1 and to comply with the provisions of Applicable Laws;
- xxviii acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly;
- xxix remain at all times, responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Service Provider from its obligations or liability hereunder;
- xxx the Service Provider may undertake implementation of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Service Provider shall remain solely responsible to meet the scope of work as mentioned in this Agreement;
- xxxi pay in a timely manner the Annual Concession Fee at all time during the Agreement period;
- xxxii timely furnish the Performance Security as per the terms of the Agreement; and
- xxxiii make good the shortfall in the Performance Security in a timely manner.

## **8.2 Minimum Share / Equity requirements (if and as applicable)**

- 8.2.1 The aggregate share along with its Associate/s in the subscribed and paid up equity share capital of the Service Provider shall be not less than:
- i 100% (one hundred percent) until the 10<sup>th</sup> (tenth) anniversary i.e. lock in period of the Commercial Operation Date of the Project.
  - ii 51% (fifty one percent) for a period until the end of Agreement Period.
- 8.2.2 At no stage during the Lock in Period shall any change in the shareholding pattern be made by any of the Associate(s)/ Subscriber(s) without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make Associates or the Service Provider non-compliant with Articles 8.2.1. above.

## **8.3 Information Regarding Project Site**

- 8.3.1 The Service Provider reaffirms and assumes responsibility for all the data and designs, tests, visitor data and projections and other data used in formulating its Bid.

8.3.2 The Service Provider 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 implementation 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 OM&M; and
- vi Any other existing condition, which has a bearing on the working conditions during Agreement Period.

8.3.3 The Service Provider shall, by submitting its Bid, be deemed to have carried out such due diligence, inspection, etc. and the Service Provider 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 judgment, consistent with Good Industry Practices. The Service Provider shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Bid.

#### **8.4 Sufficiency of Agreement Period**

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

#### **8.5 Service Providers Representative**

8.5.1 The Service Provider's Representative shall be the person named under Article 37.11. If at some point of time the Service Provider is unable to provide the services of the person named as under the Service Provider's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Service Provider's Representative.

8.5.2 The person named as the Service Provider's Representative under this Operation, Management and Maintenance 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 Service Provider Representative, the Service Provider 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 Service Provider's Representative.

8.5.3 The Service Provider's Representative shall be exclusively appointed, employed or engaged by the Service Provider to give his whole time to directing the preparation of the Project Documents (**the "Project Documents"**), and operation, management and maintenance of the Project. Except as otherwise stated in this Agreement, the Service Provider's Representative shall receive on behalf of the Service Provider all notices, instructions, consents, approvals, certificates, determinations and other communications under this Agreement. Whenever the Service Provider's Representative is to remain absent from the Project Site for a continuous period in excess of 7 (seven) days, a suitable replacement Person shall be appointed with the Authority's consent.

8.5.4 The Service Provider'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 Service Provider's Representative, specifying the powers, functions and authorities being delegated or revoked. Service Provider'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 Service Provider's Representative. Any such delegation shall not relieve the Service Provider's Representative of its obligation and duties under this Agreement.

## **8.6 Work Programs**

8.6.1 The Service Provider shall prepare and submit a Project Implementation Schedule to the Authority before the Compliance Date. The program shall include the following:

- i The order in which the Service Provider proposes to carry out the Implementation of the Project (including each stage of design, procurement, manufacture, delivery to Project Site, erection, testing and commissioning).
- ii All major events and activities in the production of Project Documents.
- iii The particulars for the pre-commencement reviews and for any other submissions, approvals and consents specified in this Agreement.

8.6.2 Any alternation/ revision by the Service Provider in the Project Implementation Schedule shall be made in accordance with Article 12.3.

8.6.3 If the progress of the Works does not conform to the Project Implementation Schedule, the Authority may instruct the Service Provider to revise the Project Implementation Schedule, showing the modifications necessary to achieve Implementation Date as per Project Implementation Schedule.

8.6.4 The Service Provider shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Service Provider proposes to adopt for the execution of the Works.

8.6.5 The Project Implementation Schedule shall be developed using PERT (Programme Evaluation and Review Techniques) charts showing critical activities and milestones for Implementation of all works and services within the stipulated time period and submitted to the Authority.

## **8.7 Total Quality Management**

8.7.1 During the Implementation and Operation, Management and Maintenance (OM&M) Period, the Service Provider shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Agreement. The Service Provider shall maintain adherence to such Performance Standards and Technical Requirements throughout the currency of the Project.

8.7.2 The Service Provider shall institute a quality assurance system that shall be followed during the Agreement Period. Compliance with the quality assurance system shall not relieve the Service Provider of its duties, obligations or responsibilities under this Agreement. The Authority reserves the right to inspect periodically or at random the project interventions. The Service Provider shall offer full co-operation to such checks and inspections.

## **8.8 Progress Reports**

8.8.1 During the period when the Service Provider is undertaking Implementation, the Service Provider shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report on the progress. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. The reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the preceding month to which it relates. Reporting in terms of this Clause shall continue until the Service Provider has completed the Implementation and the permission to commence commercial operation is issued pursuant thereto. Each monthly report shall essentially include:

- i An executive summary;
- ii For the Implementation of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated implementation date of the activity;
- iii Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public in general;
- iv Comparisons of actual and planned progress, with details of any aspects which may jeopardize the Implementation in accordance with this Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- v details of unresolved disputes and claims, if any.

## **8.9 Coordination**

8.9.1 The Service Provider shall be responsible for the coordination and proper execution of the Works and services, including co-ordination of any other Persons or Sub-contractors to the extent specified in this Agreement. The Service Provider shall, upon reasonable request by the Authority, cooperate 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 cooperation shall not unreasonably interfere with the carrying out of the Works. The Service Provider shall afford all reasonable opportunities for carrying out their work to:

- i The workmen of the Authority;
- ii Any other persons employed by the Authority and their workmen; and
- iii 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 Operation, Management and Maintenance Agreement, which the Authority may require.

## **8.10 Sub - contracting**

The Service Provider may subcontract tasks relating to its obligations and responsibilities under this Operation, Management and Maintenance Agreement, including but not limited to tasks relating to Implementation including installation or erection of Project Facilities, OM&M of the Book Cafés. Provided however, for all intents and purposes, the Service Provider shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Operation, Management and Maintenance Agreement. The Service Provider shall be responsible for the acts or defaults of any of its Subcontractors, its agents or employees, as if they were the acts or defaults of the Service Provider, its agents or employees. Any subcontracting shall not relieve the Service Provider of its obligations and liabilities under this Agreement.

## **8.11 Plant and Equipment**

8.11.1 The Service Provider shall provide all machinery, plant and equipment necessary to ensure the implementation of the Book Cafés. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.

8.11.2 The Service Provider shall maintain an adequate inventory of consumables and spare parts and undertake periodic and preventive maintenance as required for the relevant equipment. The Service Provider shall ensure continuous workflow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Agreement Period or addition of cost, towards the Project.

## **8.12 Access for Supervision**

8.12.1 The Service Provider shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of complete and uninterrupted Right of Way in respect of the

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Project Site thereof to the representatives of or Persons duly authorized 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 Service Provider shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.

- 8.12.2 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 Operation, management and maintenance of the Project consistent with the purpose of the Person gaining such access.

### **8.13 Materials**

- 8.13.1 All materials used in the project shall conform to the Technical Requirements & Performance Standards mentioned in Schedule III. However, the Service Provider shall have freedom to choose best quality materials, fixtures and fittings of the standard desired for a Similar Facility as per the General Industry Practice.

- 8.13.2 The Service Provider shall at its own cost and responsibility arrange for the requisite materials, and any other materials and fixtures used in the works, as well as ancillary materials.

### **8.14 Supply of Power, Water and Other Consumables**

- 8.14.1 The Service Provider 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 Agreement Period.

- 8.14.2 The Authority shall, if requested by the Service Provider, use all reasonable endeavors to assist the Service Provider in obtaining the supply of such services, provided that the Service Provider 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 Service Provider of its obligations under paragraph above. The Authority shall notify the cost to the Service Provider. The Service Provider shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

### **8.15 Safety**

Within 1 (one) month from the Agreement Date, the Service Provider shall provide to the Authority details of its safety plans and procedures for the Works and services. The Service Provider shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Agreement, the Service Provider shall, from the commencement of Works on the Project Site until the expiration of this Agreement or upon termination of this Agreement, provide fencing, lighting, guarding



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and watching of the Facilities. The Service Provider shall be responsible in the operation of machinery and equipment, and any other work and to take all precautions to ensure safety of the staff, laborers and public.

#### **8.16 Environmental Measures**

- 8.16.1 The Service Provider 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 in the vicinity resulting from the implementation, operations, management and maintenance thereof.
- 8.16.2 The Service Provider shall dispose of the waste/garbage as per the Applicable Laws and ensure that the users do not litter in an around the Project Facility.
- 8.16.3 The Service Provider shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, it'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 judgments arising out of the failure of the Service Provider to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

#### **8.17 Hazardous Materials**

The Service Provider 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 Service Provider during its activities, which are toxic or similarly hazardous to the health or safety of persons.

#### **8.18 Treasures/Fossils**

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

#### **8.19 Project Site Clearance**

- 8.19.1 During the Implementation of the Book Cafés, the Service Provider 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.
- 8.19.2 The Service Provider shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.
- 8.19.3 Within 10 (ten) days of Permission to Commence Operations, the Service Provider shall clear away and remove, from the Project Site, all Service Provider's Equipment, surplus materials, wreckage, rubbish, other debris and temporary works. The Service Provider shall leave such

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areas and works in a clean and safe condition to the satisfaction of Authority on 'as is where basis'. Except that the Service Provider shall be entitled to retain on any part of the Project Site, until the expiry of the Agreement Period, such Service Provider's Equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Agreement in respect of the OM&M of the Project.

- 8.19.4 Within 30 (thirty) days of the expiry of the Agreement Period, the Service Provider shall clear away and remove, from the Project Site all the Service Provider's Equipment, surplus material, wreckage, rubbish, other debris and Temporary Works. The Service Provider shall leave the Project Site in a clean, functional and safe condition to the satisfaction of Authority. Provided that if the Service Provider fails to remove, at the end of the 30 (thirty) days period, any remaining Service Provider's Equipment, surplus material, wreckage, rubbish and Temporary Works, the Authority may sell or otherwise dispose of such items at risk and cost of Service Provider. The Authority shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Service Provider, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due to the Service Provider are insufficient to meet the Authority's costs, the outstanding balance shall be recoverable from the Service Provider by the Authority.

## **8.20 Project Site Security**

The Service Provider shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, materials, Service Provider's Equipment and other things required for the Implementation of services and operation and maintenance of the Project Facility unless otherwise stated in this Agreement:

- i The Service Provider shall be responsible for keeping unauthorized persons off the Project Site and prevent encroachment on the Project Site during the Implementation Period.
- ii Authorized persons during the Implementation Period shall be limited to the employees of the Service Provider, employees of its Sub-contractors and employees and persons authorized by the Authority.

## **8.21 Limitations**

- 8.21.1 The Service Provider shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Agreement.
- 8.21.2 The Service Provider shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

## **8.22 Mutual Obligations of Parties**

Each Party shall:

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- i. comply with and perform its respective obligations under this Agreement and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party.
- ii. carry out their respective obligations during the Implementation Period and Operation, Management & Maintenance Period.
- iii. understand that the title to and ownership of the Project Site shall at all times vest in the Authority and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Service Provider or Persons or any other Third Party claiming by, under or through the Service Provider. The Project Assets, buildings, Works, services, utilities created by the Service Provider shall be owned by the Service Provider during the Agreement Period and shall be transferred to the Authority upon the expiry or prior termination of the Operation, Management and Maintenance Agreement.
- iv. understand that the Agreement granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Agreement , upon the termination of this Agreement for any reason whatsoever.

**ARTICLE 9: DELETED**

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## **ARTICLE 10: LABOUR**

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

### **10.1 Engagement**

The Service Provider shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their payment, housing, feeding and transport.

### **10.2 Information on Labour and Equipment**

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

### **10.3 Labour Laws**

The Service Provider shall ensure that all labour laws, rules and regulations will be followed and the Service Provider shall be the primary employer of labour employed by it for the Project. The Authority or any of its officers, employees, and representative shall in no way be responsible for any of the obligations, whether statutory or otherwise, towards any of the employees hired by the Service Provider in relation with the Project.

### **10.4 Labour Insurance**

The Service Provider shall ensure that all labour and staff employed with it are adequately covered with Insurance such as ESI, Personal Accident, Group Mediciam / Mediciam, etc. at its own cost and expense.

**ARTICLE 11: DELETED**

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## **ARTICLE 12: COMMENCEMENT TIME AND DELAYS**

### **12.1 Commencement**

- 12.1.1 The rights and obligations of the Parties under this Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Service Provider elects to carry out prior to the Effective Date including investigations, surveys, design, etc. shall be entirely at the risk and cost of the Service Provider.
- 12.1.2 The Service Provider shall not be permitted to commence work on any part of the Project Site prior to the issuance of the Certificate of Compliance under Article 4 of this Operation, Management and Maintenance Agreement.
- 12.1.3 Any delay on the part of the Authority (unless such delay is contributed by the Service Provider) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

### **12.2 Time for Implementation**

The Implementation of the Book Cafes, Shimla shall be in accordance with the Implementation Period, provided that this period, as stated, may be extended by mutual agreement in writing between both the Parties. The Authority may reject the request for extension without assigning any reason thereof.

### **12.3 Progress**

- 12.3.1 If at any time, the Service Provider's actual progress falls behind the Project Implementation Schedule referred to in Article 8.6, or it becomes apparent that it will so fall behind, the Service Provider shall submit to the Authority a revised Project Implementation Schedule taking into account the prevailing circumstances. The Service Provider shall, at the same time, notify the Authority of the steps being taken to expedite progress so as to achieve Implementation Date within the Scheduled Period as specified under Article 12.2.
- 12.3.2 If the revision of the Project Implementation Schedule is necessitated due to any default, negligence or oversight of the Service Provider, the Service Provider shall be responsible, to take all further steps for the rectification and revision of the programme and the underlying Works at its cost.
- 12.3.3 Notwithstanding anything to the contrary in this Article, a revision in the Project Implementation Schedule that results in the extension of the Implementation Period shall become effective only after it has been approved in writing by the Authority.

#### **12.4 Delay in Implementation**

- 12.4.1 If the Service Provider delays Implementation beyond the Implementation Period and if in the opinion of the Authority, such delay is caused by any negligence, default, or failure of the Service Provider, no extension of the Implementation Period shall be given by the Authority. In such a case the duration of the Agreement Period shall also not be adjusted and the Service Provider shall be solely responsible for the corresponding reduction of the period for which the Project Site is used and any reduction in revenue as a consequence thereof.
- 12.4.2 In case the Service Provider fails to complete the Implementation within the stipulated time, the Authority shall issue a notice to the Service Provider to complete within such reasonable time as will be specified in the notice and shall also be asked to pay damages, as specified in Article 3.4. If the Service Provider fails to complete the Implementation within the time specified in the notice the Authority may proceed to terminate this Operation, Management and Maintenance Agreement in accordance with Articles 22.



**ARTICLE 13: DELETED**

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## **ARTICLE 14: COMPLETION OF PROJECT**

### **14.1 Permission to Commence Operations**

The Authority would be required to accord Permission to Commence Operations after the Implementation of the Book Café , Shimla has been completed in all respect in accordance with the provisions of this Agreement and Schedules hereto and is ready to use.

### **14.2 Permission to Commence Operations not a Cessation of Liability**

The Permission to Commence Operations under this Article shall not in any way but it shall be a milestone for reckoning the commencement of Commercial Operations and permit the Service Provider to commence Commercial Operations of the Book Café:

- i Reduce or alter the liabilities of the Service Provider;
- ii Constitute a waiver of unfulfilled obligations;
- iii Bar remedy and rectification of defects; and
- iv Constitute an acceptance of the Works.

## ARTICLE 15: OPERATIONS, MANAGEMENT AND MAINTENANCE PERIOD

### 15.1 Commencement and Duration

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

### 15.2 Obligations of the Service Provider during Operation, Management and Maintenance (OM&M) Period

15.2.1 During the OM&M Period the Service Provider shall be responsible for performing all the obligations and complying with the Performance Standards laid down in Schedule III of this Operation, Management and Maintenance Agreement.

15.2.2 In the event of failure to perform the obligations or comply with the Performance Standards and rectifying any defects within permissible time limits or any extension thereof, laid down in **Schedule III and relevant Guidelines as mentioned in the Annexure**, the Service Provider shall be liable to a penalty which shall not exceed 0.05% of Performance Security for each day until rectification of such defect/damage subject to maximum of 10% of Performance Security for each lapse in compliance in the performance standards or Guidelines / Acts, Rules and Guidelines of MC Shimla as maybe issued from time to time. It is clarified that the penalty amount should not exceed the amount of Performance Security which in turn shall lead to Service Provider Event of Default Article 22.1. The Service Provider shall be liable for replenishing/maintain the Performance Security to its original value.

15.2.3 The Service Provider recognizes and acknowledges the fact that the Project is intended to establish places of new trend of hanging out as the first and most popular choice for young and old people to enjoy their coffee time while reading and chatting, and the Service Provider shall have no right to prevent, impede or obstruct any bona fide visitor from using the Book Café, save and except for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Service Provider apprehends any detriment to the Book Café it shall seek instructions from the Authority, whose decision in this regard shall be final.

15.2.4 The Service Provider shall remove the defects or damage found by Authority at his own cost and ensure the performance standards are maintained throughout.

15.2.5 The Service Provider is obliged to carry out adjustments, repairs, replacements or modifications during the OM&M period to maintain the Book Café etc. The Authority shall

permit the Service Provider 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 Project Facility, then such request shall only be granted if the Service Provider's request is reasonable under all the circumstances, having regard to the Service Provider's obligations to keep the Project operation open during all permitted hours of the day.

### **15.3 Scope of Work during O&M Period**

15.3.1 In addition to what is provided elsewhere in this Operation, Management and Maintenance Agreement, the Service Provider shall have the following obligations and responsibilities during the OM&M Period: -

- i. The Service Provider shall be responsible, at its own cost, for all the maintenance and repairs of the Project and all its components, including buildings, structures, all services and allied works. The Service Provider shall also carry out rectification of any defects in the design or implementation of any facilities of the Book Cafes as specified in 15.2 above.
- ii. The Service Provider shall with due diligence carry out all necessary and periodical tests/ inspections in accordance with the Applicable Laws. The Service Provider shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicative by the test results.
- iii. The Service Provider shall be entitled at its own costs, expenses and consequences to perform the following:
  - a. Institution and supervision of operating policies, principles, systems and procedure for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
  - b. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
  - c. To issue its receipts and invoice in its own name.
- iv. The Service Provider shall, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.
- v. The Service Provider shall deploy adequate trained staff to manage complete operations of the Book Café as per Performance Standards detailed in Schedules to this

Agreement. The Service Provider shall bear the entire responsibility and liability for operation of the Project.

- vi. The Service Provider shall be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Agreement.
- vii. Notwithstanding anything contained herein, the Service Provider shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the project or by reason of deficiency in the service at the Project or otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Service Provider shall always keep the Authority indemnified in this regard.
- viii. The Service Provider shall ensure that the highest service standards and good hospitality industry practices comparable with Book Cafes of similar standings will be adopted and followed in the said Project throughout the Agreement Period.
- ix. The Service Provider 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 Service Provider.
- x. The Service Provider shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Project.
- xi. The Service Provider shall ensure general upkeep of the Project Area in accordance with the maintenance terms envisaged in this Agreement.

#### **15.4 Reporting**

15.4.1 The Authority on its own or through its Authorized Representatives, shall undertake inspection of the Project Facilities, as and when deemed appropriate, to determine its condition including its compliance with the standards as set out in the Schedules to this Agreement.

15.4.2 The Service Provider 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 Service Provider shall also submit to the Authority the following: Upon obtaining knowledge thereof, any of;

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

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

15.4.4 The Service Provider 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 judgments arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance.

## **15.5 Books and Records**

The Service Provider shall, at its cost:

- i Prepare and maintain on generally accepted Indian accounting principles, proper, accurate and complete books, records and accounts of all transactions related to the Project.
- ii Retain and store on the Project Site for a period of at least ten years or such period as maybe required under any applicable laws all records relating to the Project, which shall be the property of the Authority.
- iii Provide support to the Authority to meet all the data requirements of all Competent Authorities.

## **15.6 Accidents**

15.6.1 In the event of an accident, the Service Provider shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Service Provider'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 Service Provider shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Service Provider shall then arrange for the expeditious removal of the wreckage or debris and for cleaning the Project Site. If any portion of the Book Café suffers any damage, the Service Provider shall, with the consent of Authority, arrange for the repair and rectification thereof.

15.6.2 The Service Provider 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 Service Provider in accordance with Article 7.3.

15.6.3 Any communication to the news media made by the Service Provider shall provide only enough information to satisfy public concern and the Service Provider shall neither make any admissions nor accept any liability in any such communications.

## **15.7 Powers of the Authority**

15.7.1 The Authority or its Authorized Representatives or Auditors shall have the powers and duties set out in this Agreement or any other powers required for the proper Operation, Management & Maintenance of the Project, including, (without limitation):

- i Compliance to the OM & M requirements by Service Provider;
- ii Review and verify the implementation of Variations;
- iii Recommend for approval by the Authority any improvements or modifications (that are not Variations) proposed by any of the members of the Monitoring Committee / Nodal Officer;
- iv Review compliance Performance Standard requirements;
- v Approve any modifications to the Project as per by laws, proposed by the Service Provider;
- vi Approve any other matter which it deems necessary for operation, management and maintenance of project facility;
- vii Impose penalties on the Service Provider as stipulated in Article 15.2.2.
- viii Review matters arising out of complaint register.

15.7.2 The Authority shall have the power, if it so desires, to appoint an Expert or specialist Person in any area required, for a review of the operation, maintenance and planning of the Project. Such persons shall act as an Expert / Independent Expert (**the “Expert” / “Independent Expert”**), who’s expert professional opinion, once confirmed by the Authority, shall be binding on the Parties and the Authority.

15.7.3 The Authority shall, either through inhouse capability (Nodal Officer) or by appointing any Expert/ specialist, carry out structural safety audit after every 10 (ten) years, throughout the Agreement Period.

15.7.4 The Service Provider and the Authority shall extend full co-operation to the Expert. All the expenses of the Expert shall be borne equally between the Parties.

**ARTICLE 16: PROJECT COMPLETION CERTIFICATE**

**16.1 Project Completion Certificate**

- 16.1.1 Subject to fulfilment of the requirements of the Transfer of the Project set out under Article 34 and upon a request made by the Service Provider, within a period of 30 (thirty) days from such request, the Authority shall issue the “Project Completion Certificate” to the Service Provider, which concludes the Service Provider’s liability under this Operation, Management and Maintenance Agreement.
- 16.1.2 Within 15 (fifteen) days of the expiry of the Agreement Period, the Service Provider shall prepare a detailed inventory of all movable and immovable properties forming part of the Project and submit the same to the Authority.
- 16.1.3 The remaining Performance Security furnished by the Service Provider shall be released only after the issuance of the Project Completion Certificate in pursuance of this Article.



## **ARTICLE 17: REPRESENTATIONS AND WARRANTIES**

### **17.1 Representations and Warranties of the Authority**

The Authority represents and warrants to the Service Provider that:

- i The Authority has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- ii The Authority has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- iii This Operation, Management and Maintenance Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- iv The Authority is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Operation, Management and Maintenance Agreement;
- v The Authority has good and valid right to the Project Site, and has power and authority to grant a license in respect thereto to the Service Provider;
- vi The Service Provider shall have complete and uninterrupted Right of Way in respect of the Project Site in accordance with this Agreement;
- vii There is no litigation, claim, demand or any proceeding pending before any authority in respect of the Authority'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 The Authority has the financial standing and capacity to perform its obligations under the Agreement.

### **17.2 Representations and Warranties of the Service Provider**

The Service Provider represents and warrants to the Authority that:

- i It is duly organized, 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 Agreement 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 authorize the execution, delivery and performance of this Agreement;
- iv It has the financial standing and capacity to undertake the Project;
- v This Agreement 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 Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii All the information furnished in the Service Provider's Proposal is, and shall be, true and

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- correct as on the Effective Date;
- viii The execution, delivery and performance of this Operation, Management and Maintenance 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 Service Provider'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;
- ix As on the date of the Agreement, there are no actions, suits, proceedings, or investigations pending or, to the Service Provider'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 Service Provider under this Agreement 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 Agreement;
- x As on the date of the Agreement, the Service Provider 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 Service Provider's ability to perform its obligations and duties under this Agreement;
- xi The Service Provider 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 Agreement;
- xii The aggregate equity share holding of the Associate(s) in the issued and paid up equity share capital of the Service Provider are and shall remain in accordance with the requirements stipulated in Article 8.2;
- xiii All rights and interests of the Service Provider 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 Service Provider or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Service Provider 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 Agreement;
- xiv No representation or warranty by the Service Provider 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
- xv The Service Provider warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Service Provider, to any person by way of commission or otherwise for securing the Project or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Authority

**17.3 Disclosure**

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

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## ARTICLE 18: CHANGE IN SCOPE

### 18.1 Change in Scope

18.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 18 and the costs thereof shall be expended by the Service Provider and reimbursed to it by the Authority in accordance with Article 18.3.

18.1.2 If the Service Provider determines at any time that a Change of Scope is necessary for providing safer and improved Services to the users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 18 or inform the Service Provider in writing of its reasons for not accepting such Change of Scope.

18.1.3 Any works or services which are provided under and in accordance with this Article 18 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

### 18.2 Procedure for Change of Scope

18.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Service Provider a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

18.2.2 Upon receipt of a Change of Scope Notice, the Service Provider shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- i. the impact, if any, which the Change of Scope is likely to have on the project Implementation Schedule if the works or services are required to be carried out during the Implementation Period; and
- ii. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of

the Facility and Project Infrastructure, along with the proposed premium or discount on such rates; provided that the cost incurred by the Service Provider in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Nodal Officer or any such Expert appointed by the Authority having relevant expertise on the subject under consideration (**"Independent Expert"**) as reasonable; and

iii. its likely impact on the Gross Revenue and profitability of the Project.

18.2.3 Upon receipt of information set forth in Article 18.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Service Provider, and the Parties shall, with assistance, thereupon of the Nodal Officer / Independent Expert, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the **"Change of Scope Order"**) requiring the Service Provider to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Service Provider to proceed with the performance thereof pending resolution of the Dispute.

18.2.4 The provisions of this Agreement, insofar as they relate to Implementation and relevant Tests, if any, shall apply mutatis mutandis to the works undertaken by the Service Provider under this Article 18.

### **18.3 Payment for Change of Scope**

Within [7 (seven)] days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Service Provider of a sum equal to [20% (twenty per cent)] of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, [20% (twenty per cent)] of the cost assessed by the Nodal Officer or Independent Expert, as the case may be. The Service Provider shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documents as is reasonably sufficient for the Authority to determine the accuracy thereof. Within [30 (thirty)] days of receipt of such bills, the Authority shall disburse to the Service Provider such amounts as are certified by the Nodal Officer / Independent Expert, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 28.

### **18.4 Restrictions on Certain Works**

18.4.1 Notwithstanding anything to the contrary contained in this Article 18, the Authority shall not require the Service Provider to undertake any works or services if such works or

services are likely to delay the Project COD; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining Implementation Completion and issuing the Permission to Commence Operations.

18.4.2 Notwithstanding anything to the contrary contained in this Article 18, the Service Provider shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the estimated market value of the original scope in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of such market value at any time during the Agreement Period.

#### **18.5 Financing by the Service Provider**

Notwithstanding anything to the contrary contained in this Article 18, the Parties may, subject to this Article 18.5 agree on determining the Change of Scope which may be financed partly or entirely by the Service Provider, if such arrangement enables the Service Provider to provide the financing and undertake its recovery in accordance with the provisions of this Agreement.

**ARTICLE 19: DELETED**

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**ARTICLE 20: DELETED**

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## ARTICLE 21: SUSPENSION

### 21.1 Suspension upon Service Provider Default

Upon occurrence of a Service Provider Event of 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 Service Provider under this Agreement including the Service Provider's right to collect revenues pursuant hereto; and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform 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 Service Provider 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 Service Provider, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

### 21.2 The Authority to act on behalf of Service Provider

21.2.1 During the period of Suspension, the Authority shall, on behalf of the Service Provider, collect all revenue from the Project in accordance with this Agreement. The Authority shall be entitled to apportion such revenues for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Article 24.1.

21.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Service Provider in accordance with the provisions of this Agreement shall continue to vest in the Service Provider therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Service Provider 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 Service Provider and the Service Provider undertakes to indemnify the Authority for all costs incurred during such period. The Service Provider hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Article 21.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Service Provider with respect to the Project Operation, Management & Maintenance, and which is used or created by the Service Provider in performing its obligations under the Agreement.

### **21.3 Revocation of Suspension**

21.3.1 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 Service Provider 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.

21.3.2 Upon the Service Provider having cured the Service Provider Event of 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 Service Provider under this Agreement.

### **21.4 DELETED**

### **21.5 Termination**

21.5.1 At any time during the period of Suspension under this Article 21, the Service Provider may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

21.5.2 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 22.1, the 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 Service Provider Event of Default.

## ARTICLE 22: TERMINATION FOR DEFAULT

### 22.1 Service Provider Event of Default

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

- i. The Service Provider is in breach of its obligations under this Operation, Management and Maintenance Agreement, which has a Material Adverse Effect upon the Authority or the Project;
- ii. The time prescribed for making payment of the Annual Concession Fee shall be the essence of this Agreement. Non-Payment of the Annual Concession Fee shall be accounted as Service Provider Event of Default and subsequently form a ground for termination of this Agreement.
- iii. The Service Provider is in breach of any representation or warranty made under this Agreement or it repudiates this Agreement.
- iv. The Service Provider fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Agreement.
- v. Change in Ownership has occurred in breach of the provisions of Article 8.2 of the Agreement.
- vi. The Service Provider abandons the Project or any of its material obligations as provided under this Agreement.
- vii. The check list items have not been completed within the period set forth in this Agreement.
- viii. The Service Provider defaults on any of its obligations pertaining to compliance with Acts, Rules and Guidelines of Municipal Corporation Shimla or any other applicable laws, guidelines, rules, regulations, acts, etc.
- ix. The Service Provider has not furnished the Performance Security in accordance with Article 5.4 and the Service Provider fails to replenish or provide fresh Performance Security within a cure period of 30 (thirty) days.
- x. The Service Provider does not comply with its Minimum Equity Requirements under Article 8.2.
- xi. The Service Provider fails to undertake the OM&M Obligations including compliance with the Maintenance Requirements as mentioned in this Agreement.
- xii. The Service Provider creates any Encumbrances, charges or lien in respect of Project / Project Site or any part thereof in favor of any Person, save and except as otherwise expressly permitted in this Agreement.
- xiii. Any transfer pursuant to law of either (a) the rights and/or obligations of the Service

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Provider under this Agreement and/ or (b) all or material part of the assets or undertaking of the Service Provider; except (i) to the extent permitted by this Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Service Provider to perform its obligations under this Agreement.

- xiv. A resolution is passed by the shareholders of the Service Provider for the voluntary winding up of the Service Provider.
- xv. The Service Provider is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Service Provider or for any of its property that has a material bearing on the Project.
- xvi. The Service Provider fails to comply with the provisions laid down in Article 8.1.
- xvii. Any petition for winding up of the Service Provider is admitted by a court of competent jurisdiction or the Service Provider 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 Service Provider are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Service Provider under this 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 Agreement and Project Agreements;
  - b The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Service Provider as on the Compliance Date; and
  - c All the Project Agreements remain in full force and effect.
- xviii. The Service Provider assigns this Agreement or any of its rights or obligations under the Agreement, where such assignment is not in accordance with the terms and conditions of the Agreement.
- xix. The Service Provider submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars.

**22.1.2** Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Service Provider Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Service Provider; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Service Provider of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Service Provider to make a representation and may after the expiry of such 15

(fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of this Article 22.1.2.

## **22.2 Termination for Authority Event of Default**

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

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

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

## **22.3 Termination Payment**

**22.3.1** Upon Termination by the Authority on account of a Service Provider Event of Default, the Service Provider shall not be entitled to receive any Termination Payment during the Implementation Period. However, during the Operation, Management & Maintenance Period, the Authority shall allow the Service Provider, to remove all the movable assets except any assets fixed or installed on the Project Facility.

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

**22.3.2** Upon Termination by the Service Provider on account of Authority Event of Default, the Authority shall allow the Service Provider, to remove all the movable assets except any assets fixed or installed on the Project Facility.

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

All payments due to the Service Provider as calculated under this Article shall be made within 30 (thirty) days of Termination of the Agreement.

**22.3.3 Deleted**

**22.3.4** The Service Provider expressly agrees that Termination Payment under this Article 22 shall constitute a full and final settlement of all claims of the Service Provider on account of Termination of this Agreement for any reason whatsoever and that the Service Provider or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

**22.3.5** As a consequence of Termination, irrespective of the reason for Termination, the Service Provider shall transfer all assets fixed and installed on Project Facilities forming part of the Project Assets to the Authority upon the Transfer Date.

**22.4 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- i. be deemed to have taken possession and control of the Project forthwith;
- ii. take possession and control of all materials, stores, implements, and equipment, IT infrastructure including hardware and software on or about the Project Site;
- iii. be entitled to restrain the Service Provider and any person claiming through or under the Service Provider from entering upon the Project Site or any part of the Project Site;
- iv. require the Service Provider to comply with the Divestment Requirements set forth in Article 23.1; and
- v. succeed upon election by the Authority, without the necessity of any further action by the Service Provider, to the interests of the Service Provider under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Subcontractors 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 Service Provider. For the avoidance of doubt, the Service Provider acknowledges and agrees that all sums claimed by such Subcontractors 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 Service Provider and such Subcontractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

**22.5 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 22.3.4, 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

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

## **22.6 Defect Liability**

### **22.6.1 Liability for defects after Termination**

The Service Provider shall be responsible for all defects and deficiencies in the Project for a period of 90 (ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project during the aforesaid period. In the event that the Service Provider fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Service Provider's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Service Provider to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from Termination Payments or Performance Security.

## ARTICLE 23: DIVESTMENT OF RIGHTS AND INTEREST

### 23.1 Divestment Requirements

23.1.1 Upon Termination, the Service Provider shall comply with and conform to the following Divestment Requirements:

- i. notify to the Authority forthwith the location and particulars of all Project Assets;
- ii. deliver forthwith the actual or constructive possession of the Project including Project Site, free and clear of all Encumbrances;
- iii. cure all Project Assets, including the approaches, pavements, structures, services and equipment of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Implementation Period, all Project Assets shall be handed over on “as is where is” basis after bringing them to a safe condition;
- iv. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its Implementation, OM&M etc., including all programmes and manuals pertaining thereto, as on the Transfer Date. For the avoidance of doubt, the Service Provider represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation, management and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- v. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- vi. on the Transfer Date the Declaration of License shall automatically terminate and the Service Provider, its subcontractors, agents, employees and licensees shall vacate the Project Facility and leave the possession of the Project Assets;
- vii. 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 Service Provider in the Project and Project Site, including manufacturers’ warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- viii. 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 Service Provider in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

23.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Service Provider, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.



### **23.2 Inspection and Cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the Effective Date of such Termination, the Authority shall verify, after giving due notice to the Service Provider specifying the time, date and venue of such verification and/or inspection, compliance by the Service Provider with the Maintenance Requirements. Defaults, if any, in the Maintenance Requirements shall be cured by the Service Provider at its cost and the provisions of Article 22.6 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 23.

### **23.3 Cooperation and assistance on Transfer of Project**

23.3.1 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 in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Parties.

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

### **23.4 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule-X** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Service Provider of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Service Provider.

### **23.5 Divestment costs etc.**

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

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

## ARTICLE 24: LIABILITY AND INDEMNITY

### 24.1 General indemnity

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

### 24.2 Liability of the Authority

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

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

### 24.3 Indemnity by the Service Provider

24.3.1 Without limiting the generality of Article 24.1 and 24.2, the Service Provider shall fully indemnify, hold harmless and defend the Authority from and against any and all loss and/or Damages arising out of or with respect to:

- i. failure of the Service Provider to comply with Applicable Laws and Applicable Permits;
- ii. payment of taxes required to be made by the Service Provider in respect of the income or other taxes of the Service Provider's contractors, suppliers and Representatives;
- iii. Non-payment of amounts due as a result of materials or services furnished to the Service Provider or any of its contractors which are payable by the Service Provider or any of its Sub-contractors; or
- iv. Breach by the Service Provider of any of the obligations under this Agreement.

24.3.2 Without limiting the generality of the provisions of this Article 24, the Service Provider shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which

the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or by the Service Provider's Contractors in performing the Service Provider's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Service Provider shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Service Provider shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Service Provider is unable to secure such license within a reasonable time, the Service Provider shall, at its own expense, and without impairing the specifications and standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

#### **24.4 Notice and contest of Claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 24 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand 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 or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

#### **24.5 Defense of claims**

24.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 24, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the

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Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

24.5.2 If the Indemnifying Party has exercised its rights under Article 24.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

24.5.3 If the Indemnifying Party exercises its rights under Article 24.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (ii), (iii) or (iv) of this Article 24.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **24.6 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 24, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

#### **24.7 Survival on Termination**

The provisions of this Article 24 shall survive Termination.

**ARTICLE 25. DELETED**

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## ARTICLE 26 INSURANCE

### 26.1 Insurance during Agreement Period

The Service Provider shall effect and maintain at its own cost, during the Implementation Period and the OM&M Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice including, but not limited to, Fire, Burglary, Theft, Earthquake, Storm, Workman Compensation, ESI, Group Medclaim / Medclaim, Personal Accident, etc. (the “**Insurance Cover**”). The Service Provider 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 Service Provider during the Implementation Period. The Service Provider shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall provide a photocopy of the receipt to the Authority. For the avoidance of doubt, the level of insurance to be maintained by the Service Provider after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

### 26.2 Notice to the Authority

Not later than 15 (fifteen) days prior to commencement of the Implementation Period or the OM&M Period, as the case may be, the Service Provider shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Service Provider 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.

### 26.3 Evidence of Insurance Cover

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

### 26.4 Remedy for failure to Insure

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

## **26.5 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Service Provider pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## **26.6 Service Provider's waiver**

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

## **26.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Service Provider and it shall, apply such proceeds for any necessary repair, re-construction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

## ARTICLE 27: FORCE MAJEURE

### 27.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Article 27.2, 27.3 and 27.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party; and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (iii) has Material Adverse Effect on the Affected Party.

### 27.2 Non-Political Event

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

- i. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- ii. strikes or boycotts (other than those involving the Service Provider, 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 of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year and not being an Indirect Political Event set forth in Article 27.3;
- iii. any failure or delay of a Subcontractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Subcontractor;
- iv. any judgment or order of any court of competent jurisdiction or statutory authority made against the Service Provider in any proceedings for reasons other than (i) failure of the Service Provider to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;
- v. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- vi. any event or circumstances of a nature analogous to any of the foregoing.

### 27.3 Indirect Political Event

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

- i. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- ii. industry-wide or State-wide strikes or industrial action for a continuous period of 24



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- (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- iii. any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Service Provider for an aggregate period exceeding 7 (seven) days in an Accounting Year;
  - iv. any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Subcontractor;
  - v. any Indirect Political Event that causes a Non-Political Event; or
  - vi. any event or circumstances of a nature analogous to any of the foregoing.

#### **27.4 Political Event**

27.4.1 A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- i. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Article 35.1;
- ii. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Service Provider or of the Subcontractors;
- iii. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Service Provider or any of the Subcontractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's or any Subcontractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- iv. any failure or delay of a Subcontractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Subcontractor; or
- v. any event or circumstance of a nature analogous to any of the foregoing.

#### **27.5 Duty to report Force Majeure Event**

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

- i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;
- ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- iii. the measures which the Affected Party is taking or proposes to take for alleviating

- iv. the impact of such Force Majeure Event; and
- v. any other information relevant to the Affected Party's claim.

27.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

27.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **27.6 Effect of Force Majeure Event on the Agreement**

27.6.1 Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the implementation period may be extended by a period equal in length to the duration of the Force Majeure Event, at the discretion of the Authority, upon receipt of written request from the Service Provider.

27.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- i. before COD of the Project, the Agreement Period and the dates set forth in the Project Implementation Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- ii. after COD of the Project, whereupon the Service Provider is unable to collect project revenues despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Agreement Period shall be extended by a period, equal in length to the period during which the Service Provider was prevented from collection of project revenues on account thereof.

## **27.7 Allocation of costs arising out of Force Majeure**

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

27.7.2 Upon occurrence of a Force Majeure Event after the Compliance Date, the costs incurred and attributable to such event and directly relating to the Project i.e. the Force Majeure Costs shall be allocated and paid as follows:

- i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- ii. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable
- iii. to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Service Provider, and to the extent Force Majeure

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Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Service Provider; and

- iv. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Service Provider.

For the avoidance of doubt, Force Majeure Costs may include OM&M Expenses, any increase in the cost of Implementation on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Service Provider's share of project revenues or debt repayment obligations (if any).

27.7.3 Save and except as expressly provided in this Article 27, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

### **27.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 27, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

### **27.9 Termination Payment for Force Majeure Event**

27.9.1 If the Termination is on account of Non Political Event, the Service Provider shall be entitled to remove all the movable assets except any assets fixed or installed on the Project Facility.

27.9.2 If the Termination of this Agreement is on account of an Indirect Political Event, the Service Provider shall be entitled to remove all the movable assets except any assets fixed or installed on the Project Facility.

27.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Service Provider in an amount that would be payable under Article 22.3.2 i.e. Authority's Event of Default.

### **27.10 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; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

**27.11 Excuse from performance of obligations**

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

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

## ARTICLE 28: DISPUTE RESOLUTION

### 28.1 Dispute Resolution

- 28.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably.
- 28.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 28.1.3 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 28.

### 28.2 Performance during Dispute

Performance of this Operation, Management and Maintenance Agreement shall continue during the settlement of any Dispute under this Article 28. The provision of this Dispute Resolution Procedure shall be binding upon the successors; assigns and any trustee or receivers of either the Authority or the Service Provider.

**ARTICLE 29: DELETED**

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## ARTICLE 30: MONITORING COMMITTEE

### 30.1 Appointment

30.1.1 Prior to the Effective Date, the Authority shall appoint a Monitoring Committee or a Nodal Officer.

30.1.2 Deleted

30.1.3 In case the Authority chooses to appoint a Nodal Officer the Service Provider shall abide by the decisions of the Nodal Officer.

### 30.2 Powers and Duties

30.2.1 The Monitoring Committee / Nodal Officer shall have the powers and duties set out in this Agreement or any other powers required for the proper Implementation, operation, management and maintenance of the Project, including, (without limitation) to monitor and inspect:

- i. Compliance of statutory requirements of the Service Provider;
- ii. Compliance to the Operation, Management & Maintenance obligations of the Service Provider;
- iii. Review the Service Provider's reports;
- iv. Review and verify the implementation of Variations;
- v. Recommend for approval by the Authority any improvements or modifications (that are not Variations) proposed by any of the members of the Monitoring Committee / Nodal Officer;
- vi. Review compliance Performance Standard requirements;
- vii. Recommend for approval by Authority any modifications or capacity addition to the Project as per by laws, proposed by the Service Provider;
- viii. Recommend for approval by Authority any other matter which it deems necessary for Implementation and operation, management & maintenance of project facility;
- ix. Recommend the Authority to impose penalties on the Service Provider as stipulated in Article 15.2.2.
- x. Review matters arising out of complaint register. The Committee / Nodal Officer may refer the matter for consideration and approval to the Authority.

30.2.2 The Monitoring Committee / Nodal Officer shall have the power to appoint Expert or specialist Person in any area required, for a review of the operation, management, maintenance and planning of the Project. Such persons shall act as an Expert (the "**Expert**" / "**Independent Expert**"), whose expert professional opinion, once confirmed by the Monitoring Committee / Nodal Officer, shall be binding on the Parties and the Monitoring Committee.

30.2.3 Without limitation to the generality of the foregoing Articles, the Monitoring Committee / Nodal Officer shall have the power to appoint an Independent Expert to undertake and determine the cost of repairs required as well as for the valuation of any other Works.

30.2.4 The Service Provider and the Authority shall extend full co-operation to the Monitoring Committee / Nodal Officer and to any Expert appointed by the Monitoring Committee / Nodal

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Officer. All the expenses of the Monitoring Committee shall be borne equally between the Parties. If the Authority appoints only Nodal Officer then the expenses shall be borne by the Authority.

- 30.2.5 The Monitoring Committee / Nodal Officer shall meet at least once every year of the calendar year at such time & venue as may be indicated by the convener and notified to all the members of the Monitoring Committee / Nodal Officer at least 14 (fourteen) days before the date of the meeting during the OM&M Period.

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## ARTICLE 31: REDRESSAL OF PUBLIC GRIEVANCES

### 31.1 Complaints Register

- 31.1.1 The Service Provider shall maintain a public relations office at the Project Site where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Service Provider at Project Site so as to bring it to the attention of all the Users.
- 31.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Service Provider. Immediately after a complaint is registered, the Service Provider shall give a receipt to the Complainant stating the date and complaint number.
- 31.1.3 Without prejudice to the provisions of Articles 31.1.1 and 31.1.2, the Authority may, in consultation with the Service Provider, specify the procedure for making complaints in electronic form and for responses thereto.

### 31.2 Redressal of Complaints

- 31.2.1 The Service Provider shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Service Provider to the Complainant under a certificate of posting.
- 31.2.2 Within 7 (seven) days of the close of each quarter, the Service Provider shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Service Provider to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Service Provider shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

## ARTICLE 32: DISCLOSURE

### 32.1 Disclosure of Specified Documents

The Service Provider shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Project Site and Service Provider's registered office. The Service Provider shall prominently display applicable tariff at the Project site public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same available to any person upon payment of copying charges on a “no profit no loss” basis.

### 32.2 Disclosure of Documents relating to safety

The Service Provider shall make available for inspection by any person copies of all Documents and data relating to safety of the Project and Project Site, free of charge, during normal business hours on all working days, at the Service Provider's Registered Office. The Service Provider shall make copies of the same available to any person upon payment of copying charges on a “no profit no loss” basis.

**32.3** Notwithstanding the provisions of Articles 32.1 and 32.2, the Authority shall be entitled to direct the Service Provider, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

“The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 32.1 and 32.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.”

**ARTICLE 33: USER CHARGES/FEES**

**33.1 Levy and Appropriation of User Charges/Fees**

33.1.1 On and from the COD, the Service Provider shall have the sole and exclusive right to demand, collect and appropriate Fee/User Charge as per the market driven rates for the facilities provided by the Service Provider in accordance with the provisions of this Agreement. The Service Provider shall carry the Operation, Management & Maintenance of Book Café , other project facilities including parking and landscaped areas and also be responsible for collection of the tariff and other charges applicable on Book Café and other facilities.

33.1.2 The Authority expressly recognizes that the right of the Service Provider or its Subcontractors to levy, demand, collect, retain, and to appropriate fee/charges in accordance (i) with the terms of this Agreement; and (ii) to exercise all rights and remedies available under Applicable Law and under this Agreement for the recovery of such User Charges/ Fee.

**ARTICLE 34: TRANSFER OF THE PROJECT**

- 34.1 On the Transfer Date, the Service Provider 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 Service Provider after the Compliance Date of all the Service Provider's right, title and interest in and to the Book Cafes/ Project Assets and the Project/Project Land on 'as is where basis'. The Service Provider shall also deliver to the Authority or its nominated agency on such date such operating manuals, 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 Project either directly or by its nominated agency. The personnel of the Service Provider shall continue to be the employees of the Service Provider and the transfer of the Project Assets and the Project shall not in any manner affect their status as employees of the Service Provider and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.
- 34.2 The Service Provider shall to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Service Provider shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Service Provider has approved such assignment under the terms and conditions of the relevant contract.
- 34.3 The Service Provider 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 Service Provider and subsisting at the time of transfer except any contracts with employees.
- 34.4 The transfer of the Project and Project Assets shall be treated as a transfer on a going concern basis. 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 Project Facilities and the title to all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising Project Assets shall be deemed to be transferred to the Authority or its nominated agency by constructive delivery and possession.
- 34.5 At the time of transfer, the Project 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.
- 34.6 3 (three) months prior to the Transfer Date, the Authority shall be entitled to appoint any consulting engineer to assess the condition of the Project. Such consulting engineer shall be entitled to have free access to the Project Site to inspect the Project Facilities, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project.

- 34.7 Until the Transfer Date, all risks shall lie with the Service Provider for loss of or damage to the whole or any part of the Project, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement.
- 34.8 The Service Provider shall provide fair and just compensation to its employees as required under the Applicable Laws or under this Agreement and shall indemnify the Authority against any claims 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 Service Provider's employees, staff, labour etc.
- 34.9 On the Transfer Date, all the sublicense agreements/arrangements shall be terminated. The Service Provider shall hand over the Project Site and Project Assets to the Authority or its nominated agency at zero cost and the Service Provider, its Subcontractors, agents, employees and sublicenses shall vacate the Project Site and Project Assets.
- 34.10 From the Transfer Date, the obligations and the rights of the Service Provider under this Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Project and the Project Assets and their operation and maintenance and any other rights or obligations arising out of this Agreement which either expressly or implicitly survive termination of this Agreement; provided, however, that the Service Provider may continue with any other business operations arising other than in connection with this Agreement and provided further that the Service Provider shall no longer act in its capacity as Service Provider in relation or pursuant to this Agreement.
- 34.11 On the Transfer Date, the Service Provider 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 Service Provider after the Compliance Date of all the Service Provider's right, title and interest in and to the Works/Project Assets and the Project/Project Land. Any delay in vacating the Project Site and transferring the Project in accordance with the provisions of Article 34 to the Authority by the Service Provider beyond the Transfer Date shall lead to imposition of penalty on the Service Provider. In such a case, the Service Provider shall be liable to pay the Authority, for each day of delay beyond the transfer date, an amount equivalent to 1% (one percent) of Performance Security.

However, upon request in writing by the Service Provider, the Authority may, at its sole discretion and in writing, waive fully or partially the penalty imposed on the Service Provider, provided the Authority is convinced of the reasons stated by the Service Provider for not vacating the Project Site and transferring the Project on the Transfer Date.

- 34.12 On completion of the transfer by the Service Provider to the Authority of all rights, titles and interests in the Project Site, Project Assets and Project Facilities, the Authority shall issue a Project Completion Certificate to the Service Provider. The Project Completion Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the

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Project Site/ Project / Project Assets by the Service Provider and their vesting in the Authority hereto.

- 34.13 After taking over the Project from the Service Provider, the Authority may bid the Project as running concern for its OM&M through an open and competitive bidding process by giving the Service Provider a first right of refusal on such terms and conditions as specified by the Authority and which are mutually agreed between the Parties.
- 34.14 The Service Provider at all times during the Agreement Period shall maintain an Asset/Inventory Register containing the list of all movable and immovable assets as associated with the Project. The Service Provider shall handover the associated assets to the Authority at the time of transfer of the Project.

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## ARTICLE 35: CHANGE IN LAWS

### 35.1 Increase in Costs

If as a result of Change in Law, the Service Provider suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 5,00,000/- (Rupees Five Lakhs only) and 0.5% (zero point five percent) of the Revenue being collected by the Service Provider in any Accounting Year, the Service Provider may so notify the Authority and propose amendments to this Agreement so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Service Provider, the Parties shall meet, as soon as reasonably practicable, but no later than 45 (forty five) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Service Provider may by notice require the Authority to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Service Provider, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35.1 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

### 35.2 Reduction in costs

If as a result of Change in Law, the Service Provider benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 5,00,000/- (Rupees Five Lakhs only) and 0.5% (zero point five percent) of the revenue being collected by the Service Provider in any Accounting Year, the Authority may so notify the Service Provider and propose amendments to this Agreement so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 45 (forty five) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Service Provider to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Service Provider shall pay the amount specified therein to the Authority; provided that if the Service Provider shall dispute such claim of the Authority, the same

shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

**35.3 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 Service Provider any sums on account of a Change in Law if the same are recoverable from the Users.



## ARTICLE 36: DISCLAIMER

### 36.1 Disclaimer

- 36.1.1 The Service Provider acknowledges that prior to the execution of this Agreement, the Service Provider has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, specifications and standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Service Provider confirms that it shall have no claim whatsoever against the Authority in this regard.
- 36.1.2 The Service Provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 36.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Service Provider, Associates or any person claiming through or under any of them.
- 36.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 36.1.1 above shall not vitiate this Agreement, or render it voidable.
- 36.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 36.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 36.1.4 shall not prejudice the disclaimer of the Authority contained in Article 36.1.1 and shall not in any manner shift to the Authority any risks assumed by the Service Provider pursuant to this Agreement.
- 36.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Service Provider and the Authority shall not be liable in any manner for such risks or the consequences thereof.

## **ARTICLE 37: MISCELLANEOUS PROVISIONS**

### **37.1 Governing Law and Jurisdiction**

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

### **37.2 Waiver**

37.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this 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 Agreement;
- ii. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- iii. Shall not affect the validity or enforceability of this Agreement in any manner. 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 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.

### **37.3 Exclusion of implied warranties**

This 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.

### **37.4 Severability**

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other 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 Agreement or otherwise.

### **37.5 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the 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.

### **37.6 Custody of Documents**

The Project Documents shall be in the custody and care of the Service Provider. Unless stated otherwise in this Agreement, the Service Provider shall provide 2 (two) copies for the use of the Authority.

### **37.7 Copyright**

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

### **37.8 Use of the Authority's Documents**

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

### **37.9 Compliance with Applicable Laws**

37.9.1 The Service Provider shall, in all matters arising in the performance of this Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Applicable Laws of any legally constituted public authority having jurisdiction over the Works. The Service Provider 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 Implementation of the Works. The Authority and the Service Provider shall comply with all the laws as applicable.

37.9.2 In the performance of this Agreement, the Service Provider shall ascertain and comply with all Applicable Laws. The Authority will provide such reasonable assistance as may be requested by the Service Provider in ascertaining the nature and extent of such relevant Applicable Laws.

37.9.3 The Service Provider 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 Service Provider, any Subcontractor or their respective agents or employees to comply with Applicable Laws in respect to the operation, management and maintenance activities conducted at the Project Site, during the performance of the Works.

37.9.4 If the Service Provider or the Authority finds any divergence between any Applicable Law and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence.

**37.10 Joint and Several Liability**

**37.11 Notifications**

37.11.1 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.

37.11.2 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.

37.11.3 In the case of the Service Provider, 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 Service Provider from time to time.

**Name of Service Provider's Representative:** .....

**Address for communication:** .....

37.11.4 In the case of the Authority, all communication shall be addressed to the:

.....

**37.12 Language**

The language of this 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 Operation, Management & 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.

**37.13 Counterparts**

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

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

Selection of Service Provider for Operation, Management and maintenance of Book Café's constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

<p><b>SIGNED SEALED AND DELIVERED</b></p> <p>For and on behalf of</p> <p><b>The Authority by:</b> _____(Signature) _____(Name) _____(Designation)</p>	<p><b>SIGNED SEALED AND DELIVERED</b></p> <p>For and on behalf of</p> <p><b>The Service Provider by:</b> _____(Signature) _____(Name) _____(Designation)</p>
<p><b>In the presence of</b></p> <p>1. _____(Signature) _____(Name) _____(Designation)</p>	<p>2. _____(Signature) _____(Name) _____(Designation)</p>

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**LIST OF SCHEDULES**

**(Operation, Management and Maintenance Agreement –Book Cafes Shimla, Himachal Pradesh onPPP mode)**

Schedule I: - Project Site description

Schedule II: - Deleted

Schedule III: - Scope of work, Technical Requirements & Performance Standards

Schedule IV: - Format of Performance Security

Schedule V: - List of Applicable Permits

Schedule VI: - Deleted

Schedule VII: - Deleted

Schedule VIII: - Deleted

Schedule IX: - Deleted

Schedule X: - Vesting Certificate

Schedule XI: - Deleted

Schedule XII: - Declaration of License

**SCHEDULE-I: PROJECT SITE DESCRIPTION**

**1. Location**

CHHOTA SHIMLA , Shimla-171002

Chhota Shimla is an area of Shimla, Shimla District, Himanchal Pradesh. Chhota Shimla is almost 3 kms from New Shimla. Approximate area of the Book Café situated at Chhota Shimla is 69.21 sqm.



Figure 1: Google image of the Chhota Shimla, Book Café location



Figure 2: Site plan of Chhota Shimla Book Cafe

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ii CHAURA MAIDAN, Shimla-171004

Chaura Maidan is located in Ambedkar chowk/ Nabha Estate area of Shimla Himachal Pradesh. Approximate area of the Book Café situated at Chaura Maidan is 104.03 sqm.



Figure 3: Google image of the Chaura Maidan Book Café location

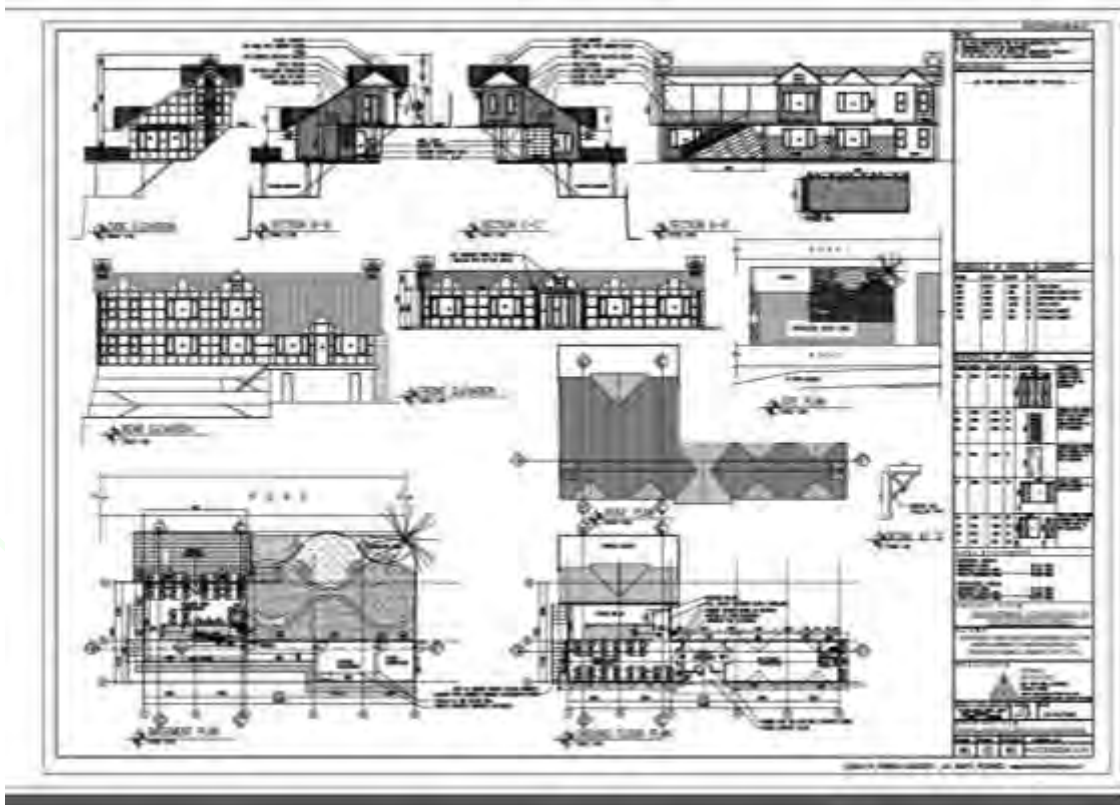


Figure 4 : Site plan of Chaura Maidan Book Cafe

iii NEW SHIMLA, Shimla-171009



Selection of Service Provider for Operation, Management and maintenance of Book Café's constructed at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

The locality New Shimla fall in Shimla district situated in Himachal Pradesh state, with a population of 1843. Approximate area of the Book Café situated at New Shimla is 150 sqm.

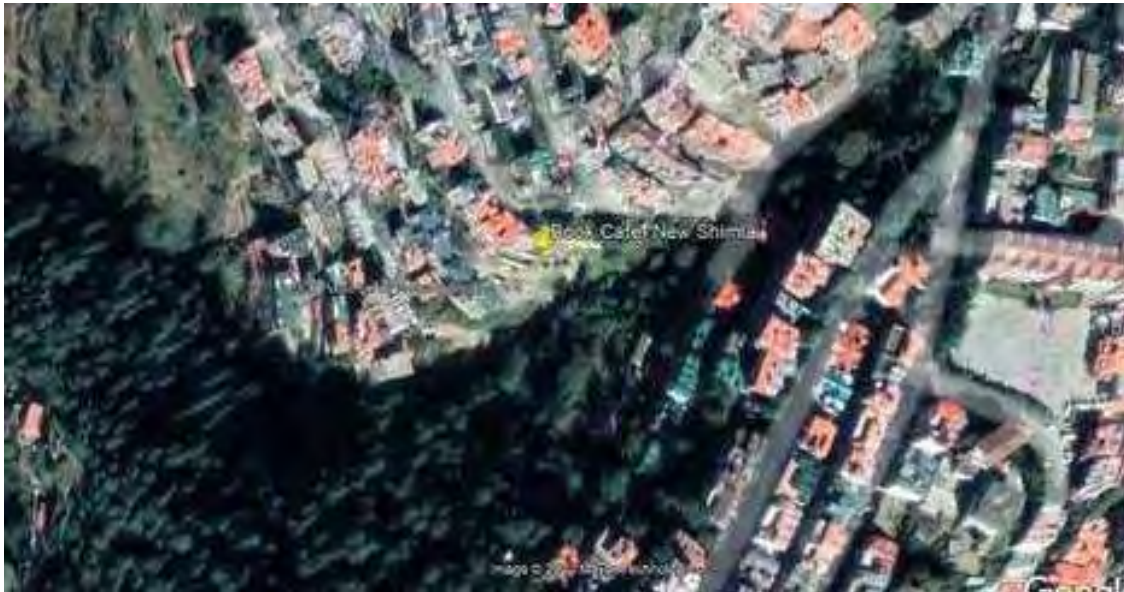


Figure 5: Google image of the New Shimla, Book Café location

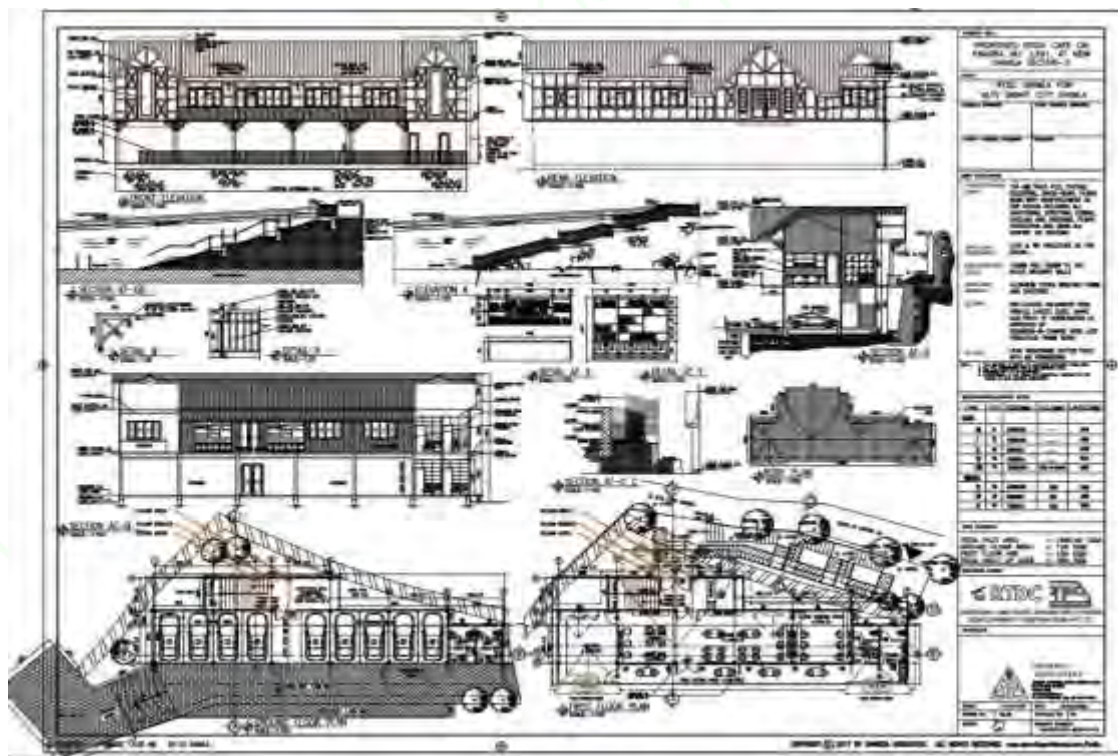


Figure 6 : Site plan of New Shimla Book Cafe

**2. Construction Status**

The Project envisages operation, management and maintenance of 3 (Three) Book Café's at Chotta Shimla, Chaura Maidan and New Shimla construction works for Book Café's all locations have already been completed.

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**SCHEDULE-II: DELETED**

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**SCHEDULE-III: SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS**

**1. SCOPE OF WORK**

**1.1 Broad Scope of Work**

The Scope of the Project (the "Scope of the Work") shall include during the Agreement Period, Operation, Management & Maintenance of the Project during the Agreement Period of 10 (Ten) years from the Effective Date / Appointed Date extendable further for a period of 5 (Five) years at the sole discretion of the Authority in accordance with the provisions of Article 3.3. Provided further that, the Service Provider is not in default of any of its obligations under the Agreement, is operating and maintaining the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation, Management and Maintenance Agreement by undertaking the following activities and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project:

- I. The Service Provider shall undertake all the activities pertaining to and incidental to the Operation, Management & Maintenance of Book Café, Shimla including, but not limited to the following:
  - a. Taking over of the Project Site on "as is where is basis" and plan, design, finance the facility, marketing and providing relevant assets, equipment, clearances/approvals, providing ancillary services and amenities related to the Project as per terms of the RFP, Operation, Management and Maintenance Agreement and Schedules thereof.
  - b. Use of quality materials for Furniture, Furnishings and all Fixtures, etc. to be in accordance with the Industry Standard.
  - c. All equipment and appliances in kitchen and seating areas, IT systems, computers and peripherals, office equipment, OFC connectivity, LED screens, etc.
  - d. Provide all furniture and equipment / appliances including beds, almirahs, consoles, LED TVs, sofas, tables, chairs, mini bars, electric kettles, etc.
  - e. Maintaining the standards in accordance with the guidelines, if any issued and amended from time to time MC Shimla.
- II. Besides the above Implementation related works the Service Provider shall have the following OM&M and other Obligations as well:
  - a. The Service Provider shall be responsible for seeking all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, food license, etc.
  - b. The Service Provider shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the vendors for various installations.
  - c. The Service Provider shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the implementation phase as well as throughout the currency of the agreement all relevant insurances as per statutory requirements or otherwise should be in place.

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- d. The Service Provider shall maintain the entire premises in accordance with Good Industry Practice.
  - e. The Service Provider shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
  - f. Meeting the requirements and norms laid down by the competent authorities regarding Operation, Management & Maintenance of the Project Facilities, if any.
  - g. Provision for availability of personnel on 12 hours on Reception Area for providing assistance to the guests visiting the Book Cafes, with an ability to communicate in English and Hindi or any other Indian regional language or any foreign language.
  - h. Performance and fulfillment of all obligations of the Service Provider in accordance with the provisions of the Operation, Management and Maintenance Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Service Provider under the Operation, Management and Maintenance Agreement.
  - i. The Service Provider shall be responsible for payment of all taxes including GST as per GoI norms issued in this regard from time to time, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- III.** The Service Provider shall undertake the OM&M of the Book Cafés in accordance with the provisions of this Operation, Management and Maintenance Agreement and the Schedules hereof.
- IV.** The Service Provider shall have the right to demand and collect Project Revenues etc. from the sub-licensees/ Users, as per the provisions of the Operation, Management and Maintenance Agreement and the Schedules hereof.
- V.** The Service Provider shall be responsible for performance and fulfillment of all other obligations of the Service Provider 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 Service Provider under this Agreement.
- VI.** The use of standards and specifications for use of material, technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.
- VII.** The Service Provider shall ensure seamless operations of all the basic necessities like drinking water, toilets, DG sets, firefighting facility, and security on the Project Site.

**1.2 Bye-Laws & Norms**

- i. While undertaking Implementation of the Project, the Service Provider shall adhere to all the Applicable Laws relevant IS Codes and practices, statutory requirements the principles of Good Industry Practices and any other norms as applicable from time to time.

- ii. The Service Provider shall be responsible for all the Applicable Permits as may be required for the Implementation and operations, management and maintenance of the Project. The Project shall be ready for operation after taking all the clearance(s), within 02( two) months of the Compliance Date / Effective Date.

## **2. SPECIFICATIONS FOR DESIGN AND IMPLEMENTATION**

### **2.1 MINIMUM BUILDING SPECIFICATIONS**

Premium quality material, fixtures, furniture, finishings, equipment and appliances, etc. shall be used.

### **2.2 LIGHTING**

- i. 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.
- ii. Service Provider is expected to save energy and should use CFL or LED lamps in order to save energy.
- iii. Service Provider may harness solar energy by installing solar panels.

## **3. PERFORMANCE SPECIFICATIONS FOR OPERATION MANAGEMENT AND MAINTENANCE PHASE**

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

### **3.1 OPERATION, MANAGEMENT AND MAINTENANCE**

- i. The Service Provider shall maintain the Project Facility in good and usable condition throughout the Agreement Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- ii. The OM&M obligations of the Service Provider 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 Service Provider in terms of the Agreement in sound, durable and functional condition.
- iii. The Service Provider shall adhere to the Guidelines issued by MC Shimla and modified from time to time.

### **3.2 EQUIPMENT MAINTENANCE**

Service Provider shall undertake planned and reactive maintenance of all equipment to ensure that equipment are safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

### **3.3 STAFFING AND PERSONNEL TRAINING**

- i. Service Provider shall make provision of adequate staff required for operation, maintenance and management of facility as prescribed in the staffing plan.

- ii. Service Provider 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.
- iii. Service Provider 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.
- iv. Service Provider should properly do verification of the staff hired.

### **3.4 SECURITY**

- i. Service Provider shall take all reasonable precautions to minimize theft, injury to visitors or their property within confines of the Book Cafes.
- ii. Service Provider shall make a provision of adequate security to prevent any theft and ensure seamless operations 24-hours of the surveillance system which continuously monitors and controls entry into and exit from the facility. A closed circuit television (CCTV) network may be augmented if required for security and surveillance as well as for central monitoring purposes.
- iii. It is the duty of the Service Provider to do thorough background check and verification of the staff they hire.

### **3.5 PREPAREDNESS AND PREVENTION**

- i. The preparedness and prevention standards are intended to minimize and prevent emergency situations at Book Cafés. Service Provider shall ensure that facility is operated, managed and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. Service Provider shall provide and maintain requisite equipment including firefighting and adequate water supply, internal communication system and alarms and provisions for contacting local authorities.
- ii. Service Provider 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.
- iii. Fire extinguisher, fire alarms and hydrants need to be maintained regularly by the Service Provider in the facility. Any damage to firefighting equipment installed in the facilities and in public spaces shall be rectified within 2 (two) days of detection. Fire extinguishers shall be replaced before the end of its expiry date.
- iv. In case of any emergency Service Provider should report and inform about the incident.
- v. Service Provider should remove visitors and provide them with a safe passage in case of any emergency.
- vi. Co-ordinate with the emergency services such as, trauma centers, hospitals, police stations, fire brigade office, etc.
- vii. Reorganize the operations with proper information, sufficient number or warning regulatory, information signs, displays or temporary change in visitor's circulation.
- viii. Attend to the affected area using manpower, machinery at Service Provider's disposal.
- ix. Clear the affected site and arrange for repairs and make a report of the incident to the Authority.
- x. The Service Provider shall evolve a comprehensive recovery plan for the restoration of

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the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:

- a. Identify and prioritize essential facility functions for recovery.
- b. Procedures for repairs / rebuilding / modifications, if any.
- c. Contingencies for alternate data processing / protection of vital records.
- d. Identify possible alternative traffic circulation / parking plans.
- e. Documentation process for after action reports.

### **3.6 PERFORMANCE AND MAINTENANCE STANDARDS/INDICATORS FOR OPERATIONS**

The OM&M of the Project shall be carried out to maintain the performance standards, which shall comprise, but shall not be limited to that described below:

The performance levels define the level at which the Project is to be operated, managed & maintained. Performance standards are defined for the operation, management and maintenance.

The obligation of the Service Provider with respect to Maintenance Requirements shall include the rectification of the defects and deficiencies within the prescribed time limit set forth by the Authority.

Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Service Provider shall be entitled to additional time in conformity with Good Industry Practice. However, the Service Provider shall get prior approval from the Authority, for such additional requirement of time.

Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the Project poses danger to the life and property of the Users thereof, the Service Provider shall promptly take all reasonable measures in consultation with Authority for elimination or minimizing such danger.

<b>S. No.</b>	<b>Parameters</b>	<b>Performance Indicators</b>	<b>Permissible Time Limits For Rectifying Defects</b>
<b>1</b>	Book Cafe	To remain operational during the normal business operation hours.	_____
<b>2</b>	Information Systems, Displays, signage and boards	To remain operational 24 (twenty four) hours a day throughout the year.	All these signage and boards should be clearly visible, legible and functional. These shall be cleaned once in a week. Damaged signage and boards replaced, repaired within seven days of their detection.



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3	All toilets, urinals, bathrooms shall be clean and functional	To remain operational during the normal business operation hours.	A minimum of 95% (ninety-five percent) toilets and urinals shall be functional. It should be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done regularly
4	Power Supply, Electrical installations, Electrical Equipment	To remain operational during the normal business operation hours.	Any disruption in power supply shall be rectified within 1 (one) business day. Timely intervention with temporary measures within 3 (three) hours, permanent restoration within 3 (three) days, depending on nature and intensity of work required as decided by Authority.
5	Telecommunication and Networking Equipment	To remain operational during the normal business operation hours.	Temporary measures within an hour and permanent restoration within a day.
6	Dustbins, spittoons etc. shall be clean and functional	Should be there at the facility all the time.	A minimum of 95% (ninety five percent) Dustbins, Spittoons shall be functional at any given point of time. Dustbins shall be emptied every day or earlier if it is full or it create foul smell in the neighborhood.
7	Drainage and Sewage	Should be operational throughout the year	Timely intervention with temporary measures within 1 (one) business day, permanent restoration within 7 (seven) days, depending on nature and intensity of work required.

For the avoidance of doubt, the Nodal Officer can at any time inspect the Project Facilities. Any shortcomings observed during the Inspection should be rectified by the Service Provider within a cure period of 15 (fifteen) days or any such other time as maybe deemed fit and reasonable by the Nodal Officer. Any delay in removal of such defects beyond the prescribed period shall be considered as an event of default of the Service Provider.

**I. Periodic Maintenance/ Renewal Activities**

Apart from the routine maintenance work, periodic maintenance work shall be done by the

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Service Provider. All preventive maintenance work shall be listed and the time of their execution should be planned before hand at beginning of year. For Periodic maintenance/Preventive Maintenance a register should be maintained further for Periodic maintenance/Preventive Maintenance work should be so organized that there is little inconvenience to the Users of Project Facility:

<b>S. No.</b>	<b>Periodic Maintenance Activities</b>	<b>Time limit for Maintenance</b>
<b>1</b>	Repainting of furniture, signage delineators, markings etc.	As per requirement
<b>2</b>	Repainting of Buildings and all other structures.	As per requirement
<b>3</b>	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, sitting area etc.	As per requirement
<b>4</b>	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual.
<b>5</b>	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
<b>6</b>	Cleaning and disinfecting of water storage/ distribution tanks, water mains	Once in a month
<b>7</b>	Cleaning of manholes / gully chambers / inspection chambers and flushing of building sewers	Once in 6 (six) months
<b>8</b>	Collection of water samples for physical, chemical and bacteriological analysis of water	Once every 15 (fifteen) days
<b>9</b>	Water proofing of roofs, terraces, interior/exterior walls, and tanks etc.	Once in 3 (three) years
<b>10</b>	Analogous addressable fire detection, fire alarm and firefighting system	Once in a year.
<b>11.</b>	Repair and maintenance for the Book Café Structure	Once every 3 years. However, any repair works for the wooden structure shall be undertaken as per requirement.

## **II. Major Maintenance Work**

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

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**SCHEDULE-IV: FORMAT OF PERFORMANCE SECURITY**

Bank Guarantee No.

**Issuer of Bank Guarantee**

(Name of Bank)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee

\_\_\_\_\_  
\_\_\_\_\_

**Details of the Bank of the Beneficiary**

Bank: <>

Branch:<>

IFSC Code:<>

**Nature of the Bank Guarantee**

Unconditional and irrevocable Bank Guarantee

**Context of Bank Guarantee**

Operation, Management and Maintenance Agreement (hereinafter referred to as the "Service Provider") to be executed amongst MC Shimla [Hereinafter referred to as the "Authority"] and \_\_\_\_\_(name of the Selected Bidder) [hereinafter referred to as the "Service Provider"] for the Operations, Management & Maintenance Book Cafés, Shimla [hereinafter referred to as the "Project"], provided, however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall be in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e. "Performance Security" shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Service Provider.

As per the terms of the Operation, Management and Maintenance Agreement, the Service Provider is required to furnish to THE AUTHORITY, an unconditional and irrevocable bank guarantee for an

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amount of Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only) as security for due and punctual performance/discharge of its obligations under the Operation, Management and Maintenance Agreement for the Agreement Period.

**Operative part of the Bank Guarantee**

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

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8. This Bank Guarantee is issued by the Bank having its office at \_\_\_\_\_ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Shimla having address at \_\_\_\_\_.

Notwithstanding anytime contained herein:

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

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**SCHEDULE-V: LIST OF APPLICABLE PERMITS**

The Service Provider shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the appointed date, save and except to the waiver granted by the Authority in accordance with this Agreement.

<b>S. No.</b>	<b>An indicative List</b>	<b>Agency (As applicable)</b>
1.	Water Connection (if applicable)	Relevant Local Authority
2.	Application for PAN, sales tax and other tax registrations etc.	Concerned Departments of State Govt. and Gol
3.	Electricity Connection (if applicable)	State Electricity/Board/Corporation
4.	Clearance for employing labour-primary employer	Labour Commissioner
5.	Employment Labour	Labour Commissioner
6.	License for Book Cafe, other related activities	Concerning Department of GoHP and Gol
7.	Fire Safety Equipment Renewals	Fire Department
8.	Pollution Certificate	Pollution Department of GoHP
9.	Permission to Commence Operations	Authority
10.	Any other permits or clearance/No Objection Certificates required under Applicable Law	Concerned Competent Authority
11.	Food License or any other license necessary for Food Storage, preparation and vending	FSSAI or other relevant Authority

**SCHEDULE-VI: DELETED**

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**SCHEDULE-VII: DELETED**

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**SCHEDULE-VIII: DELETED**

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**SCHEDULE-IX: DELETED**

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Selection of Service Provider for Operation, Management and maintenance of Book Cafés constructed/ under construction at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

**SCHEDULE-X: VESTING CERTIFICATE**

- 1 (“the Authority”) refers to the Operation, Management and Maintenance Agreement dated..... (the “Agreement”) entered into with the ..... (the “Service Provider”) for Operation, Management & Maintenance of Book Cafés ,Shimla, Himachal Pradesh on PPP Mode (the “Project”)
  
- 2 The Authority hereby acknowledges compliance and fulfillment by the Service Provider of the Divestment Requirements set forth in Article 23.1 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 Service Provider in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
  
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Service Provider to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Service Provider in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED

For and on behalf of

SERVICE PROVIDER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

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Selection of Service Provider for Operation, Management and maintenance of Book Cafés constructed/ under construction at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

**SCHEDULE–XI: DELETED**

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**SCHEDULE-XII: DECLARATION OF LICENSE**

(refer Article 6.1)

**DECLARATION OF LICENSE**

This is to declare that the License rights in terms of the Operation, Management and Maintenance Agreement dated \_\_\_\_\_ in respect of all the land (along with the existing Project Assets, infrastructure, movable and immovable property thereon, if any, belonging to the comprising the Project Site which is described, delineated and shown in Schedule I of the Operation, Management and Maintenance Agreement dated \_\_\_\_\_ including the possession thereof are hereby granted by the Municipal Corporation Shimla (i.e. the Authority/ Licensor) in favour of M/s \_\_\_\_\_ (i.e. the Service Provider) for a period co-terminus with the term of the Operation, Management and Maintenance Agreement, specifically for the purpose of Operation, Management & Maintenance of Book Cafés, Shimla on PPP Mode (the “**Project**”).

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

Dated :

\_\_\_\_\_  
**Municipal Corporation Shimla**

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Selection of Service Provider for Operation, Management and maintenance of Book Cafés constructed/ under construction at Chhota Shimla, Chaura Maidan and New Shimla, Distt. Shimla Himachal Pradesh on PPP mode.

**ANNEXURE – I**

**APPLICABLE GUIDELINES FOR BOOK CAFES**

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**ANNEXURE – II**

**SITE PLAN, LAYOUT AND DRAWINGS**

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