



REQUEST FOR PROPOSAL

FOR

**SELECTION OF AN OPERATOR FOR UPGRADATION, OPERATION,
MANAGEMENT AND MAINTENANCE OF FOOD COURT IN FRONT OF VENDING
COMPLEX NEAR LIFT, SHIMLA ON PUBLIC PRIVATE PARTNERSHIP MODE**



ISSUED BY:

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

November, 2023





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CONTENTS OF RFP DOCUMENTS

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

CONTENTS OF VOLUME– I

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

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

Appendices

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

Annexure-A: Site Layout

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

**Himachal Pradesh Infrastructure Development Board, Himachal Pradesh****NOTICE INVITING REQUEST FOR PROPOSAL****Dated: 20.11.2023**

The General Manager, Himachal Pradesh Infrastructure Development Board, Himachal Pradesh (the “**HPIDB**”) on behalf of the Municipal Corporation, Shimla, Himachal Pradesh (the “**Authority**”), invites interested entities to participate in the bidding process for the **Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, Himachal Pradesh on Public Private Partnership (PPP) mode**. The summary of various activities with regard to this invitation of bids is listed in the activity table below:

S. No.	Items	Description
1.	Name of the Project	Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, Himachal Pradesh on Public Private Partnership (PPP) mode.
2.	Mode of submission of bids	Hard copy submission (Technical Bid shall be scanned and submitted in sealed pen drive also).
3.	Cost of Bid Document	Rs.5,000/- (Rupees Five Thousand only) + 18% GST.
4.	Bid Security Amount	Rs.5,00,000/- (Rupees Five Lakhs only)
5.	Bid Document on portal, i.e., Start Date & Time	Start Date: 21.11.2023 from 10.00 A.M. on the portal: http://himachalservices.nic.in/hpidb/ or physically collected from the office of the General Manager, HPIDB, Himachal Pradesh.
6.	Last Date & Time for sending Pre-Bid/ RFP Queries	04.12.2023 upto 4.00 P.M. by email on hpidb-hp@nic.in or by post to the General Manager, HPIDB at the address of HPIDB mentioned in this RFP
7.	Date & Time of Pre-Bid Conference	06.12.2023 at 3.00 P.M. at the office of HPIDB at Shimla, Himachal Pradesh
8.	Date & Time for response to Pre-Bid queries	15.12.2023 upto 4.00 P.M. on the portal: http://himachalservices.nic.in/hpidb/
9.	Last date & Time for Bid submission (Bid Due Date)	06.01.2024 till 4:00 P.M.
10.	Date & Time for opening	06.01.2024 at 04:30 P.M at the office of HPIDB,

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	of Technical Bid	Shimla, Himachal Pradesh
11.	Date & Time for opening of Financial Bid	To be notified subsequently to technically shortlisted Bidders

1. Bidding Document can be seen on and downloaded from the portal: <http://himachalservices.nic.in/hpidb/> or purchased physically from the office of the General Manager, HPIDB, Himachal Pradesh (H.P.) by the interested parties.
2. Where the Bidding Document is downloaded from the aforesaid portal, then the Bidding Document Fee has to be submitted at the time of submission of Bid through Demand Draft of **Rs.5,000/- (Rupees Five Thousand only)** + 18% **GST** in favour of the **“Himachal Pradesh Infrastructure Development Board”**, payable at Shimla. If purchased directly from the office of HPIDB, then payment shall be made by way of Demand Draft at the time of purchase and receipt thereof enclosed with the Bid.
3. The Bidding Process can be postponed or cancelled at any time by the HPIDB and no claim shall be entertained on this account.
4. For further details and bidding schedule, visit the portal <http://himachalservices.nic.in/hpidb/>
5. HPIDB shall in no event accept any conditional Bid from the Bidders.

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



DISCLAIMER

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

This RFP is not an agreement and is neither an offer nor an invitation by the HPIDB and/or the Authority, to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with the information that may be useful to them in making their technical and financial offers pursuant to this RFP (the “**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the HPIDB and the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all the persons, and it is not possible for the HPIDB and the 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.

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

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

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

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

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

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the HPIDB and/or the 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 and/or the 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.

ASSISTANCE TO THE BIDDER

Any queries relating to the RFP document and the terms and conditions therein should be addressed to the General Manager, HPIDB at the email: **hpidb-hp@nic.in**



VOLUME I – INFORMATION TO BIDDERS

*Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court
in front of Vending Complex near Lift, Shimla on PPP Mode*



1. INTRODUCTION

1.1. BACKGROUND

- 1.1.1. The Municipal Corporation, Shimla is the owner and in possession of 9 (nine) shops in raw condition along with veranda and open space total admeasuring 4491 sq. ft. approximately, located near Aajivika Bhawan located in front of vending complex near lift (to Mall Road) on Circular Road, Shimla, Himachal Pradesh (the “**Project Site**”). The site map of the Project Site is annexed herewith as **Annexure-A**.
- 1.1.2. Municipal Corporation, Shimla is desirous of developing the Project Site into a Food Court to cater to the burgeoning requirement of good food and beverage (F&B) outlets/ eating points for the tourists/ local residents of Shimla town, since there is a lack of good quality eating outlets around Circular Road, Shimla which in turn compels the tourists and residents to commute to Mall Road in search for quality food options. Considering the fact that tourists flock the Shimla town throughout the year, there is a huge potential demand for such a facility.
- 1.1.3. In order to address the long felt need for a food court to cater to the tourists/ local public in Shimla, the Municipal Corporation, Shimla through its Commissioner (hereinafter the “**Authority**”) through the Himachal Pradesh Infrastructure Development Board, Shimla (the “**HPIDB**”) is desirous of selecting an operator for developing the Project Site into a Food Court, making it functional and thereafter operating, managing and maintaining the same.
- 1.1.4. HPIDB is a statutory Board established under the Himachal Pradesh Infrastructure Development Act, 2001 and is a nodal agency in the State of Himachal Pradesh for facilitating the development of a variety of infrastructure projects on Public Private Partnership (PPP) basis and has been mandated by the State Government for managing the bidding process on behalf of the Authority for “**Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**” or “**Project Facility**”).
- 1.1.5. The Bidders are advised to take a site visit before submitting its Bid. For taking the site visit, the Bidders may contact the AGM, HPIDB at +91-98160-89689.
- 1.1.6. HPIDB seek bids through the present RFP from interested and eligible entities (the “**Bidder**”, which expression shall, unless repugnant to the context, also include the Members of the Joint Venture or Consortium) for selection of a private player to whom the Project may be awarded (the “**Selected Bidder**”) through an open competitive bidding process in accordance with the procedure set out herein and who shall thereafter undertake the Project in accordance with the terms of this RFP

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including the Concession Agreement to be executed with the Municipal Corporation, Shimla.

- 1.1.7. The Selected Bidder shall execute the Concession Agreement with the Authority, pursuant to which it shall become responsible for furnishing and setting up the Food Court and thereafter operating, managing and maintaining the Food Court/ Project Facility for a pre-determined period before transferring the same to the Authority. In case the Selected Bidder is a Joint Venture or Consortium, then the Members shall incorporate a special purpose vehicle in the form of a company under the provisions of the Companies Act, 2013 (the “**SPV**”) prior to execution of the Concession Agreement with the Authority. Pursuant to the execution of the Concession Agreement, the SPV shall be responsible for the operation, management and maintenance of the Project Site including the Project Facility.
- 1.1.8. As a part of the Bidding Documents, HPIDB has provided form Concession Agreement proposed to be executed between the Selected Bidder/ SPV formed by the Selected Bidder (as the case may be) (the “**Operator**”) and the Authority (the “**Draft Concession Agreement**” – Vol. II of RFP document). The Concession Agreement sets forth the detailed terms and conditions for the grant of concession to the Operator, including the scope of the Operator’s services and obligations (the “**Concession**”). The period for which this Concession is granted is 10 (ten) years (the “**Concession Period**”) to be reckoned from the Compliance Date (*as defined in the Draft Concession Agreement*). The Concession Period shall be inclusive of Upgradation Period of 3 (three) months during which the obligations of the Operator shall inter-alia include carrying out development works for upgrading the Project Site for running it as a Food Court, obtaining power connections, for which Municipal Corporation, Shimla will coordinate with or assist the Operator; ensuring measures for firefighting, ensuring water connection, sewerage facility, waste management, etc. for which charges are to be borne by the Operator and obtaining food licenses from the concerned authorities, in accordance with the terms of the Concession Agreement, including Schedules thereto and Good Industry Practice. The aforesaid initial Concession Period can be extended further for a period of 5 (five) years at the sole discretion of the Authority provided the performance of the Operator is satisfactory and it is not in default.
- 1.1.9. In the event, the Operator is able to complete the Upgradation Works earlier than the period of 3 months as specified above, then subject to obtaining of all applicable approvals required as per applicable laws, the Operator can commence commercial operations on an earlier date. However, in case the Operator fails to complete the Upgradation Works commence commercial operations within the Upgradation Period, any delay shall result in reduction in effective revenue generating years for the



Operator besides and without prejudice to other rights of the Authority to recover damages as per the provisions of the Concession Agreement.

- 1.1.10. The Project Site shall be handed over on license hold basis to the Operator on an ‘*as is where is basis*’. The Operator will be entitled to upgrade and make alterations to the existing Project Site without disturbing its original structure. Structural changes may be permitted only pursuant to written approval of the Authority. In the event any damage is caused to the existing structures at the Project Site due to the activities of the Operator, the repairs in respect of such damage shall be undertaken by the Operator at its own risk and cost.
- 1.1.11. The broad scope of work of the Selected Bidder/ Operator includes (but not limited to):
- (i) Submitting a “**Layout Plan**” along with drawings showing the proposed layout of the Food Court in hard as well as soft copies to the Authority to seek its prior consent/ approval in respect of the same;
 - (ii) Responsibility for seeking all statutory permits, licenses, approvals, no-objection certificates (NOCs) from the concerned/ competent/ local authorities including NOC from the office of the Chief Fire Officer, electricity department, food department and from Municipal Corporation, Shimla for commencing and carrying out the Upgradation Works as well as for smooth operations of the Food Court;
 - (iii) Responsibility for furnishing, refurbishing, equipping and making the Project Facility ready for operations after carrying out the Upgradation Works. The Operator shall use new and premium quality materials for the furniture, furnishings, fittings & fixtures, etc.;
 - (iv) Carrying out of the operation, management and maintenance and other obligations as specified in the Concession Agreement. The Operator shall also be responsible for the maintenance of the internal structures at the Project Site;
 - (v) Responsibility for undertaking the insurance of all the equipment, machinery and other movable assets, etc. brought by the Operator for the operations of the Food Court/ Project Facility. However, the insurance of the land and building will be undertaken by the Authority in its own name and favour;
 - (vi) Ensure that adequate fire protection systems are installed, checked and serviced. Any loss due to the fire as a result of Operator’s activities, to the Food Court/ Project Facility will be borne by the Operator only;
 - (vii) Be solely and exclusively responsible for the recruitment, transportation, accommodation, payment of the salaries, wages, allowances and other payments to its staff and cost incidental thereto and all taxes, charges, levies, duties payable under the Applicable Laws arising from the respective terms and conditions of employment of its personnel deployed on the Project Facility under or through whatever legal relationship. The Operator shall be



the primary employer of the staff, personnel, labour employed by it or by its sub-contractor(s)/ sub-licenses/ vendors on the Project Facility without any liability of the Authority.

- (viii) Hand back the Project Site in good condition on the date of termination of the Concession to the Authority, in accordance with the provisions of the Concession Agreement. The vacant Project Site shall revert to the Authority clear and free of any encumbrances, without any obligation of the Authority to pay or adjust any consideration or other payment to the Operator. The Operator shall be entitled to take away all its movable assets that are brought and incorporated into the Project Facility by it at its cost, without damaging the existing structures, Project Site or any part thereof. Provided however, any assets, fittings or fixtures (whether belonging to the Authority or the Operator), which are embedded/ fixed/ attached to any part of the structures of the Project Site which if tried to be removed or dislocated, can cause damage to any structure present at the Project Site, cannot be removed by the Operator and shall be mandatorily handed over to the Authority free of cost.
- (ix) Compliance with the applicable central and state legislations, the guidelines and regulations made thereunder from time to time to the extent applicable/relevant for the purposes of this Project.
- (x) In case the Agreement is terminated due to any reason prior to the Commercial Operations Date (“**COD**”), the Operator shall be allowed to take away all the moveable assets purchased and brought to the Project Site by the Operator, provided the removal of the same does not damage the Project Facility or any part thereof.

For detailed scope of work, terms & conditions, specifications & standards, etc., the Bidders are advised to peruse through the Draft Concession Agreement (Vol.-II) provided with this RFP. For co-ordination and supervision, the Authority shall designate an officer of the Municipal Corporation, Shimla, as the Nodal Officer.

- 1.1.12. Prior to handing over of the Project Facility to the Operator, the Authority and the Operator shall jointly inspect the Project Facility and prepare a joint inventory and record of the existing assets, utilities, fittings and fixtures belonging to the Authority which are installed/ present at the Project Facility.
- 1.1.13. The Operator shall be allowed to commence commercial operations of the Food Court from the Commercial Operations Date (COD) i.e. the day when the Operator has (a) completed the Upgradation Works (as defined in the Concession Agreement) in accordance with the Layout Plan approved by the Authority; and (b) obtained all the statutory permits/ licenses, NOC’s etc. from the competent authorities including the ‘license to operate’ from the concerned Competent Authority. The Operator shall not stock, store, exhibit or sell any items, which are repugnant to the public order,

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morality or decency. The Operator shall not permit or suffer the Project Site or any part thereof to be used or occupied as a place for lodging, storing, dwelling or sleeping, auction, gambling or any unlawful purpose or any other purpose not in consonance with the provisions of the Concession Agreement and applicable laws. The Operator may display advertisements within the premises in line with the applicable regulations of the Municipal Corporation Shimla.

- 1.1.14. At the end of the Concession Period or premature termination thereof for any reason, the Operator shall hand-back the Project Site in good condition to the Authority or its nominated agency, vacant and free of all encumbrances, without any obligation of the Authority to make any payment in respect thereof. The Operator shall be entitled to take away all its movable assets that are brought and incorporated into the Project Facility by it at its cost, without damaging the existing structures, Project Site or any part thereof. Provided however, any assets, fittings or fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site which if tried to be removed or dislocated, can cause damage to any structure present at the Project Site, cannot be removed by the Operator and shall be mandatorily handed over to the Authority free of cost.
- 1.1.15. In consideration of the rights, privileges and interest granted by the Authority to the Selected Bidder/ Operator in terms of the Bidding Documents particularly the Concession Agreement, the Operator shall pay to the Authority the following:
- (i) an annual fee for an amount to be quoted by the Bidders and accepted by HPIDB (the “**Annual Concession Fee**”) payable annually. The first Annual Concession Fee shall be paid on the First ACF Payment Date (*as defined in the Concession Agreement*) and in each subsequent year, the Annual Concession Fee shall be paid by the Operator on each anniversary date of the First ACF Payment Date. The Annual Concession Fee shall escalate at the rate of 5% (five percent) annually over the previous value of Annual Concession Fee every year till 3rd Anniversary of First ACF Payment Date and 10% (ten percent) every year thereafter i.e., from 4th Anniversary of First ACF Payment Date, over the previous year’s value, till the end of Concession Period.
 - (ii) Payment of all taxes, levies, etc. as may be applicable on the Annual Concession Fee.
- 1.1.16. The statements and explanations contained in this RFP are intended to provide understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or modify this RFP and the



Agreement prior to Bid Due Date. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

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

1.2. BRIEF DESCRIPTION OF BIDDING PROCESS

1.2.1 HPIDB has adopted single stage two-step open competitive bidding process (referred to as the “**Bidding Process**”) for selection of the Bidder and for award of the Project. The Bidding Process shall be carried out in accordance with procedure set out in this RFP document. All Bidders shall submit their respective Technical Bid and Financial Bid against this RFP document in a single stage. The first step of the process involves qualification of interested Parties/ Consortia on the basis of the Technical Bid submitted by the Bidders in accordance with the provisions of this RFP document, at the end of the first step, the HPIDB shall shortlist pre-qualified Bidders (the “**Qualification Phase**”). In the second step of the process, Financial Bid of only shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Selected Bidder (the “**Financial Bid Phase**”).

1.2.2 The Bid shall be valid for a period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date as specified in Clause 1.3. The Bids must be submitted at the office of HPIDB, Shimla in the manner as set out in this RFP document.

1.2.3 The Bidding Documents include the Concession Agreement and its Schedules for the Project. The aforesaid documents and any addenda/corrigenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.

1.2.4 This RFP document has been made available on the website, i.e. <http://himachalservices.nic.in/hpidb/> and can also be purchased directly from the office of HPIDB. Bid Document Fee for an amount of **Rs.5,000/- (Rupees Five Thousand only) + 18% GST**, shall be paid. If downloaded from the said website, then the Demand Draft for the said amount towards Bid Document Fee shall be submitted as a part of the Bid and if purchased directly from the office of HPIDB, then the payment shall be made directly to HPIDB through Demand Draft and receipt in respect thereof issued by HPIDB shall be enclosed with the Bid. The said Demand

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Draft shall be drawn on a Scheduled Bank in India in favour of “**Himachal Pradesh Infrastructure Development Board**” payable at Shimla, Himachal Pradesh, in a manner, prescribed in this RFP document.

- 1.2.5 In the Qualification Phase, Bidders would be required to furnish all the information as specified in this RFP and other documents to be provided by HPIDB. Only those Bidders that are pre-qualified and short-listed by HPIDB shall be eligible for the Financial Bid Phase.
- 1.2.6 In the Financial Bid Phase, the financial offer (the “**Financial Bid**”) submitted by the qualified Bidders will be evaluated. The Financial Bid shall be submitted by the Bidder as hard copy (Appendix-V) as per Clause 2.12 and 2.13.
- 1.2.7 A Bidder is required to deposit, along with its Bid, a Bid Security of **Rs.5,00,000/- (Rupees Five Lakhs Only)** (the “**Bid Security**”), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder, whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidder can opt to provide Bid Security in the form of a Demand Draft or a Bank Guarantee acceptable to the HPIDB. If the Bid Security is provided in the form of Bank Guarantee, then the same shall be valid for a period not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bid Security may be extended as may be mutually agreed between the HPIDB and the Bidder from time to time. Where Bid Security is being furnished by way of Demand Draft, its validity shall not be less than 90 (ninety) days from the Bid Due Date, for the purposes of encashment by HPIDB. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The format for the Bank Guarantee has been given in Appendix-VI.
- 1.2.8 Bids are invited for the Project on the basis of the highest Annual Concession Fee for the first year that will be offered to the Authority for the award of the Concession. The Annual Concession Fee is subject to escalation and payable in the mode and manner as specified in the Draft Concession Agreement.
- 1.2.9 The Annual Concession Fee amount shall constitute the sole criteria for evaluation of Financial Bids. In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Annual Concession Fee for the first year.
- 1.2.10 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Article 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not Selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, HPIDB, in its discretion & in

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consultation with the Authority may annul the Bidding Process or invite fresh Bids through Re-bidding of the Project, as the case may be.

- 1.2.11 Any queries or request for additional information concerning this RFP or the Project shall be submitted in writing to the address of HPIDB, or by fax on the number: 0177-2627696 and by e-mail on hpiddb-hp@nic.in addressed to the **General Manager, Himachal Pradesh Infrastructure Development Board**. The email subject line and envelopes/ communication shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on Public Private Partnership (PPP) mode”.

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

1.3 SCHEDULE OF BIDDING PROCESS

The Municipal Corporation, Shimla and/or HPIDB shall endeavor to adhere to the following schedule:

Event Description	Date
Availability of RFP	21.11.2023 from 10.00 A.M. on the portal: http://himachalservices.nic.in/hpidb/
Last date for receiving queries	04.12.2023 4.00 P.M. by email on hpiddb-hp@nic.in or by post to the General Manager, HPIDB at the address of HPIDB mentioned in this RFP
Pre – Bid meeting/ conference	06.12.2023 at 3.00 P.M. , in the office of HPIDB, Shimla, Himachal Pradesh
Date for response to Pre-Bid queries	15.12.2023 on the portal: http://himachalservices.nic.in/hpidb
Bid Due Date <i>Bids to be submitted physically to:</i> The General Manager, Himachal Pradesh Infrastructure Development Board, New Himrus Building, Himland, Shimla – 171 001	06.01.2024 till 4:00 P.M.
Date & Time of opening of	06.01.2024 at 4:30 P.M in the office of HPIDB,

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Technical Bids	Shimla, Himachal Pradesh
Date & Time of opening of Financial Bids	To be notified subsequently to technically shortlisted Bidders.
Letter of Award (LOA)	To be notified separately.
Validity of Bids	180 (one hundred and eighty) days of Bid Due Date.
Submission of Performance Security	Within 21 (twenty-one) days from the date of issuance of LOA.
Signing of Concession Agreement	Within 45 (forty-five) working days of date of LOA.

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 SCOPE OF BIDS

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

2.2 ELIGIBILITY OF BIDDERS

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

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

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- (a) The Bidder and any other Bidder have common controlling shareholders/ partners or other ownership interest; provided however, in case of a company duly incorporated under the provisions of the Companies Act, 2013, this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder (or any shareholder thereof having a shareholder of more than 10% (ten percent) of the paid up and subscribed share capital of such Bidder in the other Bidder is less than 10% (ten percent) of the subscribed and paid-up equity share capital thereof. In any other form of entity, other than a company, this disqualification shall not apply to in cases when the controlling interest of the Bidder in the other Bidder is less than 10% either in form of partnership or voting rights or in any other form as per the applicable law under which such entity has been formed/ registered or incorporated; or
- (b) a constituent of such Bidder is also a constituent of another Bidder; or
- (c) such Bidder, or its Member receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder or its Member or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or its Member; or
- (d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (e) such Bidder or any of its Member has a relationship with another Bidder or its Member, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- (f) such Bidder or any of its Members has participated as a consultant to HPIDB in the preparation of any documents, design or technical specifications of the Project.
- (v) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of HPIDB or the Authority in relation to the Project is engaged by the Bidder or its Member, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (a) issuance of the LOA or (b) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or the Operator, as the case may be, after issuance of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the



Concession Agreement and without prejudice to any other right or remedy of HPIDB and/ or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which HPIDB or the Authority may have there under or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without HPIDB or the Authority being liable in any manner whatsoever to the Selected Bidder or the Operator for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or its Member in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 1 (one) year from the date of signing of the Concession Agreement.

Explanation:

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

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

A. Technical Capacity:

For demonstrating technical capacity and experience, the Bidder in the past 5 (five) years preceding the Bid Due Date should possess experience of operating and managing 1 (one) or more of the following **Business Venture(s)** continuously for a period of at least 2 (two) years:

- (i) Food court; or
- (ii) fine-dining restaurant(s)/ multi chain restaurant; or
- (iii) multinational chain of restaurants/ fast-foods/ coffee-houses; or
- (iv) resort(s)/ hotel(s) [atleast 3 star having valid star category certification issued by the Ministry of Tourism, Government of India]; or
- (v) Lounge bars; or
- (vi) food and beverage business in a three star hotel having valid star category certification issued by the Ministry of Tourism, Government of India.

Any one or all the business ventures referred to in sub-clauses (i) to (vi) above are hereinafter referred to as the “**Eligible Business Venture(s)**”.

In case of a Joint Venture, any one Member can meet the aforesaid Technical Capacity requirement.

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B. Financial Capacity:

For demonstrating financial capacity, the Bidder shall have **Positive Net Worth of Rs.1,00,00,000/- (Rupees One Crore Only)** as on March 31, 2023.

In case of a Joint Venture/ Consortium, Lead Member of the JV/ Consortium should meet the Financial Capacity requirement.

OR

C. High Net Worth Route:

The Bidder having a **positive** Net Worth of **Rs.5,00,00,000/- (Rupees Five Crores Only)** or above shall be deemed to have applied through High Net Worth Route and shall be exempted from meeting the Technical Capacity & Financial Capacity as specified in Clause 2.2.2 (A) and 2.2.2 (B) above. **However, such Bidder shall have to demonstrate this Net-worth independently, without forming a Joint Venture.** The said Bidder must establish that it has the Net-worth of **Rs.5,00,00,000/- (Rupees Five Crores Only)** or above, during the FY 2022-2023 and accordingly provide details as per format at Annex-III of Appendix-I duly certified by its Statutory Auditor/ Chartered Accountant.

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

- (i) Certificate(s) from its Statutory Auditors/ practicing Chartered Accountant or from the concerned client(s) certifying the operation, management & maintenance of the Eligible Business Venture(s) by the Bidder, whose experience is being claimed by the Bidder, along with any other relevant documents to support the claim of the Bidder, as per Sub-Clause 2.2.2 (A) above¹. In case a particular Eligible Business Venture(s) is being jointly undertaken by the Bidder (as part of a Joint Venture), it should further support its claim for its ownership share and role in such Venture by producing a certificate from its statutory auditor/practicing Chartered Accountant;
- (ii) Certificate(s) from its statutory auditors/ practicing Chartered Accountant specifying the Net Worth of the Bidder in terms of Clause 2.2.2 (B) or Clause 2.2.2 (C), as the case may be, along with the methodology adopted for calculating the Net Worth, which conforms to the provisions of this Sub-Clause 2.2.3A below.

2.2.3A ***For the purposes of this RFP***, Net Worth shall mean:

¹ Not required in case the Bidder is applying under the High Net Worth Route.
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- i **In case of a company:** the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
- ii **In case of any other entity/body corporate:** the aggregate value of the paid up capital and reserves of such entity, after deducting the aggregate value of the intangible assets.
- iii **In case of sole proprietor:** Total value of assets evaluated by a registered valuer or the Chartered Accountant after deducting the liabilities.

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

2.2.5 Where the Bidder is a single entity, it shall execute the Concession Agreement with the Authority and implement the Project thereafter. In the event, the individual or a single entity Bidder chooses to form a Special Purpose Vehicle (SPV), then the SPV shall be incorporated under the Companies Act, 2013 for the implementation of the Project, provided the Bidder maintains the equity share/ contribution percentage as prescribed under Sub-Clause 6.8.2 of the Draft Concession Agreement. In case of a Joint Venture also, the Members will be mandatorily required to form an appropriate SPV under the Companies Act, 2013. The SPV so formed and registered shall execute the Concession Agreement and implement the Project. Further, the Joint Venture², in addition to forming a SPV, shall also comply with the following requirements:

- (i) Number of members in a Joint Venture shall not exceed 2 (two);
- (ii) Subject to the provisions of Sub-Clause 2.2.5 (i) above, the Bid should contain the information required for each member of the Joint Venture;

² Not allowed in case the Bidder is applying under the High Net Worth Route.

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- (iii) Members of the Joint Venture shall nominate one member as the lead member (the “**Lead Member**”), who shall have a shareholding (in case of Company) of at least 51% (fifty one per cent) in the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Joint Venture. The other member (the “**Other Member**”) of the Joint Venture shall have a minimum shareholding or contribution of at-least 26% (twenty six percent) in the SPV;
- (iv) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial and operations, management and maintenance obligations;
- (v) An individual Bidder cannot at the same time be member of a Joint Venture applying for the Bid. Further, a member of a particular Bidder Joint Venture cannot be member of any other Bidder Joint Venture applying for the Bid;
- (vi) Members of the Joint Venture shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-IV (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
 - (a) convey the intent to enter into the Jt. Bidding Agreement and subsequently perform all the obligations of the Operator in terms of the Agreement, in case the concession to undertake the Project is awarded to the Joint Venture;
 - (b) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (c) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Concession Agreement and the statement to this effect shall also be included in the Jt. Bidding Agreement and the Concession Agreement;
 - (d) commit that the Lead Member of the Joint Venture shall have a shareholding of at least 51% (fifty one per cent) in the SPV and the Other Member shall have at least 26% (twenty six per cent) or more shareholding/ contribution in the SPV;
 - (e) both members of the Joint Venture undertake that they shall contribute or collectively hold 100% (hundred per cent) share (including any securities that are convertible into shares) in the incorporated SPV at all times until the fifth anniversary of the Commercial Operations Date of the Project and 51% (fifty one percent) thereafter for the balance Concession Period with the Lead Member holding atleast 26% of share or contribution; and



- (vii) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.
- 2.2.6 Any entity which has been barred by the Central/ State Government or any entity controlled by it or by any local authority including Municipal Corporation, Shimla from participating in any tendering process, and the bar subsists as on the date of Bid would not be eligible to submit a Bid, either individually or as member of a Joint Venture.
- 2.2.7 A Bidder including any Joint Venture Member should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Joint Venture Member, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder or Joint Venture Member nor any of its accounts declared as a Non-Performing Account (NPA) by any Bank or Non-Banking Financial Institute in India.
- 2.2.8 The following conditions shall be adhered to while submitting a Bid:
- (i) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
 - (ii) information supplied by a Bidder (or other constituent Member, if the Bidder is a Joint Venture) must apply to the Bidder or Member named in the Bid and not, unless specifically requested, to other associated companies or firms;
 - (iii) in responding to the qualification phase, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
 - (iv) in case the Bidder is a Joint Venture, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.
- 2.2.9 While Qualification is open to persons from any country subject to Sub-Clause 2.2.1, the following provisions shall apply:
- (i) where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
 - (ii) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 50% (fifty percent) of the aggregate issued, subscribed and paid



up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

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

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

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

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

2.2.10 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 purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years, 2 (two) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 CHANGE IN COMPOSITION OF THE JOINT VENTURE

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

2.4 NUMBER OF BIDS AND COSTS THEREOF

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

2.5 SITE VISIT AND VERIFICATION OF INFORMATION

Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the site conditions, location, surroundings, the condition of the Project Facility, availability of utilities, applicable laws and regulations, restraints, etc. or any other matter considered relevant by them. The costs of visiting the Project Site, and undertaking any further studies and investigations shall be at Bidder's own expense. The Bidder or any of his personnel or agents will be granted permission to enter upon the Project Facility site for the purpose of such inspection.

2.6 ACKNOWLEDGEMENT BY BIDDER

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



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

2.7 RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS

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

2.7.2 HPIDB reserves the right to reject any Bid if:

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

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

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

2.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LOA or entering into of the Concession Agreement, and if the Bidder/ Operator has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by HPIDB or the Authority to the Bidder, without HPIDB or the Authority being liable in any manner whatsoever to the Bidder. In such an event, HPIDB or the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice

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to any other right or remedy, which HPIDB and/ or the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

- 2.7.4 HPIDB reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by HPIDB shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of HPIDB and/ or the Authority thereunder.
- 2.7.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.7.6 The documents including this RFP and all attached documents, provided by HPIDB are and shall remain or become the properties of HPIDB and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Sub-Clause 2.7.6 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and HPIDB will not return to the Bidders any Bid, document or any information provided along therewith.

2.8 CLARIFICATIONS

- 2.8.1 Bidders requiring any clarification on this RFP may notify the HPIDB in writing or by fax and e-mail in accordance with Sub-Clause 1.2.11. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The HPIDB shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded on the website <http://himachalservices.nic.in/hpidb/> without identifying the source of queries.
- 2.8.2 The HPIDB shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, HPIDB reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring the HPIDB to respond to any question or to provide any clarification.
- 2.8.3 The HPIDB may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the HPIDB shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by HPIDB/ the Authority or their employees or representatives shall not in any way or manner be binding on the HPIDB.



2.9 AMENDMENT/ MODIFICATION OF BIDDING DOCUMENTS

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

B. PREPARATION AND SUBMISSION OF BIDS

2.10 LANGUAGE

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

2.11 FORMAT AND SIGNING OF BID

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



2.11.3 In addition, the Bidder shall submit the scanned copy (pdf) of the complete Technical Bid, along with all the supporting documents required to be submitted along therewith pursuant to this RFP, in form of a pen drive. In the event of any discrepancy between the original and the scanned copy, the original shall prevail.

2.12 SEALING AND MARKING OF BIDS

2.12.1 The Bidder shall submit the Bid in the format specified at Appendix-I, together with the documents specified in Sub-Clause 2.12.2(A) and seal it in an envelope and mark the envelope as “**Technical Bid**”. The Bidder shall submit the Financial Bid in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”. The Bidder shall seal the original Technical Bid together with its enclosures and the scanned copy of the Technical Bid either in form of DVD or Pen Drive, in separate envelopes duly marking the envelopes as “**ORIGINAL**” and “**SOFT COPY**”. The envelopes shall then be sealed in an outer envelope which shall also be marked in accordance with Sub-Clauses 2.12.3 and 2.12.4.

2.12.2 (A) Each Technical Bid envelope shall contain:

- (i) Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents both in hard copy and soft copy format;
- (ii) Power of Attorney for signing the Bid as per the format at Appendix-II³;
- (iii) Power of Attorney for Lead Member of Joint Venture as per the format at Appendix-III, if applicable;
- (iv) Jt. Bidding Agreement, in case of a Joint Venture, substantially in the format at Appendix-IV, if applicable;
- (v) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership firm then a copy of its Partnership Deed;
- (vi) copies of Bidder’s duly audited balance sheets for the FYs 2022-2023; 2021-2022 and 2020-2021;
- (vii) Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Sub-Clause 1.2.4;
- (viii) Bid Security as specified in Clause 2.21;
- (ix) GST Registration Certificate (which is valid beyond Bid Due Date);
- (x) Documents of incorporation/ registration documents;
- (xi) a copy of the Instruction to Bidders, Draft Concession Agreement and Schedules of the Draft Concession Agreement, Addendum/ Corrigendum (if any) with each page stamped and initialed by the person signing the Bid in

³ Not applicable in case the sole proprietor is himself/ herself signing the Bid
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pursuance of the Power of Attorney referred to in sub-clause (ii) or (iii), as may be applicable, hereinabove.

- (B) Each Financial Bid envelope shall contain:
Financial Bid in the prescribed format (Appendix-V).

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

Bid for “Selection of Operator for Upgradation, Operation and Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on Public Private Partnership (PPP) mode”.

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

2.12.4 Each of the envelopes shall be addressed to:

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

2.12.5 If the envelopes are not sealed and marked as instructed above, the HPIDB assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.13 SUBMISSION OF THE BID

- (i) Hardcopy of the Bid should be submitted before 4:00 P.M. on or before the Bid Due Date at the above-mentioned address.
- (ii) The Bidder shall submit the hardcopy and scanned (pdf) softcopy of the Bid in the format specified at Appendix-I, together with the documents specified in Sub-Clause 2.12.2 (A) and seal it in an envelope and mark the envelope as “**Technical Bid**”.



- (iii) The Demand Draft or Bank Guarantee in original towards the payment of the Bid Security shall be put in a separate envelope inside the Technical Bid envelope and mark the envelope as “**Bid Security**”.
- (iv) The Bidder shall submit the Financial Bid in the format specified at Appendix-V and seal it in another envelope and mark the envelope as “**Financial Bid**”.
- (v) Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and mark the envelope as “**Bid**”.
- (vi) The Bidder shall seal the original and the copies of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “**ORIGINAL**” and “**SOFT COPY**”.
- (vii) The envelopes shall then be sealed in an outer envelope, which shall also be marked in accordance with Sub-Clauses 2.12.3 and 2.12.4.

2.14 BID DUE DATE

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

2.15 LATE BIDS

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

2.16 CONTENTS OF THE FINANCIAL BID

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

2.17 MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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

2.18 VALIDITY OF BIDS

- 2.18.1 The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the HPIDB. Accordingly, the validity of Bank Guarantee for Bid Security shall also be extended by the Bidder.

2.19 CONFIDENTIALITY

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

2.20 CORRESPONDENCE WITH THE BIDDER

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



C. BID SECURITY

2.21 BID SECURITY

- 2.21.1 The Bidder/ Lead Partner of the Joint Venture shall furnish as part of its Bid, a Bid Security of **Rs.5,00,000/- (Rupees Five Lakh Only)** in the form of an unconditional and irrevocable Bank Guarantee issued by a Nationalized/ Scheduled Bank in India in favour of the **“Himachal Pradesh Infrastructure Development Board”** and payable at Shimla, Himachal Pradesh, in the format at Appendix – VI (the **“Bank Guarantee”**) and having a validity period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date, which may be extended as may be mutually agreed between the HPIDB and the Bidder from time to time. HPIDB shall not be liable to pay any interest on the Bid Security so submitted and the same shall be interest free.
- 2.21.2 Bid Security can also be in the form of a Demand Draft issued by a Scheduled Bank in India, drawn in favour of the **“Himachal Pradesh Infrastructure Development Board”** from a Nationalized/ Scheduled Bank in India and payable at Shimla, Himachal Pradesh. Where a Demand Draft is provided, its validity shall not be less than 90 (ninety) days from the Bid Due Date, for the purposes of encashment by HPIDB. The Authority and/or the HPIDB shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.21.3 Any Bid not accompanied by the Bid Security shall be rejected by the HPIDB as non-responsive.
- 2.21.4 Save as provided in Sub-Clauses 2.21.6 and 2.21.7 below, the Bid Security of unsuccessful Bidders will be returned by the HPIDB, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the HPIDB. Where Bid Security has been provided by deposit of Demand Draft, the refund thereof shall be in the form of an account payee Demand Draft/ cheque in favour of the unsuccessful Bidder(s) or by way of electronic transfer of the amount into the account of the unsuccessful Bidder, as per the details provided for the same by the Bidder.
- 2.21.5 The Selected Bidder’s Bid Security will be returned, without any interest, upon the Selected Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 2.21.6 The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the HPIDB shall be entitled to forfeit and appropriate the Bid Security as compensation/ damages to the HPIDB in any of the events specified herein below.

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2.21.7 The Bid Security shall be forfeited and appropriated by the HPIDB as compensation and damages payable to the HPIDB for, inter alia, time, cost and effort of the HPIDB without prejudice to any other right or remedy that may be available to the HPIDB hereunder or otherwise, under the following conditions:

- (i) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Article 4 of this RFP;
- (ii) If a Bidder withdraws its Bid during the period of Bid validity, as specified in this RFP and as extended by the Bidder from time to time;
- (iii) In the case of Selected Bidder, if it fails within the specified time limit –
 - (a) to sign and return the duplicate copy of LOA;
 - (b) to sign the Concession Agreement within the stipulated time limit or extended time limit, which may be granted by HPIDB at its sole discretion; and/or
 - (c) to furnish the Performance Security within 21 (twenty-one) days from the date of issuance of Letter of Award.
- (iv) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3. EVALUATION OF BIDS

3.1 TESTS OF RESPONSIVENESS

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

- (i) Technical Bid is received in both hard copy as well as soft copy form, as specified in Sub-Clause 2.12.2(A);
- (ii) It is received by the Bid Due Date including any extension thereof pursuant to Clause 1.3;
- (iii) It is signed, sealed, hard/ spiral bound and marked as stipulated in Clauses 2.11 and 2.12;
- (iv) It is accompanied by the Bid Security as specified in Clause 2.21;
- (v) It is accompanied by the Power(s) of Attorney as specified in Sub-Clause 2.2.4;
- (vi) It contains all the information as requested in this RFP and in the formats as prescribed herein;



- (vii) If applicable, it is accompanied by the Jt. Bidding Agreement (for Joint Venture), specific to this Project, as stipulated in Sub-Clause 2.2.5 (vi);
- (viii) It is accompanied by the Demand Draft or Payment Receipt towards the cost of the Bidding Documents as specified in Sub-Clause 1.2.4;
- (ix) It does not contain any condition or qualification; and
- (x) It is not non-responsive in terms hereof.

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

3.2 OPENING AND EVALUATION OF BIDS

- 3.2.1 HPIDB shall open the Technical Bids *at 4:30 P.M.* on the Bid Due Date, at the office of HPIDB and in the presence of the Bidders, who choose to attend. However, HPIDB reserves the right to change the time of opening of bid in case of any exigency. Bids for which a notice of withdrawal has been submitted in accordance with Sub-Clause 2.17.1 shall not be opened.
- 3.2.2 A list of the Bidders or their representatives attending the opening of Bids shall be prepared and their signatures shall be obtained on the same. The HPIDB shall open Financial Bids of only those Bidders, who meet the eligibility criteria specified in this RFP at such date and time as intimated by the HPIDB.
- 3.2.3 The HPIDB will subsequently examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.2.4 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the HPIDB may, in its sole discretion, seek clarifications/ information in writing from any Bidder regarding its Bid. Any clarification submitted by a Bidder with regard to its Bid that is not in response to a request by HPIDB shall not be considered.
- 3.2.5 In the event that a Bidder claims credit for the Eligible Business Venture, and such claim is determined by the HPIDB as incorrect or erroneous, the HPIDB shall reject such claim and exclude the same from evaluation. Where any information is found to be patently false or amounting to a material misrepresentation, the HPIDB reserves the right to reject the Bid in accordance with the provisions of Sub-Clauses 2.7.2 and 2.7.3 and also debar the Bidder from future tenders of HPIDB.
- 3.2.6 Bidders are advised that qualification of Bidders will be entirely at the discretion of HPIDB. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

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3.3 EVALUATION OF TECHNICAL BID

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

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

3.4 TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION

3.4.1 The Bidders would have to meet the minimum Technical Capacity as defined in Sub-Clause 2.2.2 (A) to qualify for the Financial Bid stage.

3.4.2 The Bidder should provide necessary information in relation to Eligible Business Venture(s) as per the format at Annex-II of Appendix-I along with evidence in support of claim of Technical Capacity in the form of certificates from statutory auditor/ chartered accountant in support thereof as proof.

3.5 FINANCIAL INFORMATION FOR THE PURPOSES OF EVALUATION

3.5.1 The Bid must be accompanied by the Audited Balance Sheets, Financial Statements, Profit & Loss statements, ITRs of the Bidder (of each Member in case of a Joint Venture), for the last 3 (three) financial years i.e., FY 2022-23; 2021-2022; and 2020-21 along with certificate of the Statutory Auditor as per requirement set forth in terms of Clause 2.2.2 read with Clause 2.2.3.

3.5.2 The Bidder must establish Net Worth as specified in Sub-Clause 2.2.2 (B), and provide details as per format at Annex-III of **Appendix-I**.

3.5.3 Where the Bidder is applying under the High Net Worth Route, the Bidder must establish minimum Net Worth as specified in Clause 2.2.2 (C) in its individual capacity without forming Joint Venture, and provide details as per format at Annex-III of **Appendix-I**.

3.6 QUALIFICATION AND SHORTLISTING OF BIDDERS

3.6.1 In the first step of evaluation, Technical Bids of Bidders adjudged responsive in terms of Clause 3.1.1 shall be considered for Technical evaluation as per Clauses 2.2 and 3.4 of this RFP. The Bidders qualifying as per the conditions shall be shortlisted as pre-qualified Bidders and shall be considered for the next step of evaluation.

3.6.2 In the Qualification Phase, the information, documents and credentials submitted by the Bidder as a part of its Bid shall be evaluated and measured in terms of its Eligible Experience to determine the technical and financial competency/ capability of the

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Bidder (of all Members in case of a Joint Venture) *vis-à-vis* the requirements of Sub-Clauses 2.2.1, 2.2.2, 2.2.3, 3.4 and 3.5 of this RFP.

- 3.6.3 The Bidder who meets the eligibility criteria set forth in Sub-Clauses 2.2.1 to 2.2.3 and 3.4 in terms of eligible experience in respect of Technical Capacity and Financial Capacity in terms of Sub-Clauses 2.2.2, 2.2.3 and 3.5 under this RFP document, will be shortlisted and eligible for the Financial Bid Phase.
- 3.6.4 Where the Bidder is applying under the High Net Worth Route, in case the Bidder is able to establish the Net Worth requirement as specified in Sub-Clause 2.2.2 (C) in its individual capacity (without forming Joint Venture) in the Qualification Phase, such Bidder will also be shortlisted and eligible for the Financial Bid Phase.
- 3.6.5 The Bidders who are shortlisted as per Sub-Clauses 3.6.2, 3.6.3 & 3.6.4 above will be informed about the opening date of the Financial Bid on the website/ email to the shortlisted bidders and the Financial Bid shall be opened in the presence of the shortlisted Bidders who choose to attend.

3.7 OPENING AND EVALUATION OF FINANCIAL BID

- 3.7.1 The Bidders who are shortlisted as per Clause 3.6 will be informed by HPIDB about the opening date of the Financial Bid by email; the Financial Bid shall be opened in the presence of the shortlisted Bidders who choose to attend.
- 3.7.2 To facilitate evaluation of Bids, HPIDB may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.8 SELECTION OF BIDDER

- 3.8.1 Subject to the provisions of Clause 3.6, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.1 and who quotes the Highest Annual Concession Fee for the first year offered to the Authority shall be declared as successful (the “**Selected Bidder**”).
- 3.8.2 In the event that two or more Bidders quote the same amount of Annual Concession Fee (the “**Tie Bidders**”), HPIDB reserves the right either to:
- i. invite fresh Bids (i.e., financial quote) from such Tied Bidders; or
 - ii. declare as successful such Tied Bidder whose Net Worth has been evaluated to be higher than the other Tied Bidder; or
 - iii. identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tied Bidders, who choose to attend; or
 - iv. take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding Process.

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- 3.8.3 In the event that the highest Bidder withdraws or is not selected for any reason in the **first instance** (the “**first round of bidding**”), the HPIDB may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Selected Bidder.
- 3.8.4 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Sub-Clause 3.8.3 above, HPIDB may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration, which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.8.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the HPIDB to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the 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, the HPIDB may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the HPIDB on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.8.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, the Selected Bidder must satisfy the following conditions:
- (i) Submit Performance Security to the Authority; and
 - (ii) In case the Selected Bidder is a JV/ Consortium, then it shall incorporate and get itself registered as a company under the Companies Act, 2013, to act as the Operator who shall sign the Concession Agreement with the Authority.

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

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3.8.7 **Performance Security:** The Selected 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 The Commissioner, Municipal Corporation, Shimla and payable at Shimla for due and faithful performance of its obligations, of **Rs.50,00,000/- (Rupees Fifty Lakhs Only)**, within 21 (twenty one) days of the issuance of Letter of Award (LOA). This Bank Guarantee shall be returned to the Selected Bidder after 90 (ninety) days after Handback Date (*as defined in the Concession Agreement*). In case of breach of any of the provisions of the contract by the Selected Bidder/ Operator, the Authority shall revoke the Performance Bank Guarantee to apportion the losses on account of such breach. The Selected Bidder/ Operator shall have to replenish the Bank Guarantee after such apportionment to its original value (in case of partial appropriation) or furnish a new Bank Guarantee of same value (in case of total appropriation), as the case may be.

3.9 CONTACTS DURING BID EVALUATION

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

4. FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the HPIDB and/or the Authority shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, unfair practices, undesirable practice or restrictive practice in the Bidding Process. In such an event, the HPIDB and/or the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the HPIDB and/or the Authority towards, inter alia, time, cost and effort of the HPIDB and/or the Authority, without prejudice to any other right or remedy that may be available to the HPIDB and/or the Authority hereunder or otherwise.

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- 4.2 Without prejudice to the rights of the HPIDB and/or the Authority under Clause 4.1 hereinabove and the rights and remedies which the HPIDB and/ or the Authority may have under the LOA or the Concession Agreement, if a Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder or Operator shall not be eligible to participate in any tender or RFP issued by the HPIDB and/or the Authority for a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Article 4 the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (*for avoidance of doubt offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of HPIDB and/ or the Authority 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 Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one year) from the date such official resigns or retires from or otherwise ceases to be in the service of HPIDB and/ or the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process*); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issuance of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of HPIDB and/ or the Authority in relation to any matter concerning the Project;
- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;



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

5. PRE-BID CONFERENCE

5.1 Pre-Bid conference of the Bidders shall be convened at the following address:

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

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

5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of HPIDB. HPIDB shall endeavor to provide clarifications and such further information as it may, in its sole

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discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

- 5.3 The Bidders are advised to attend the Pre-Bid conference and also to visit the Project Site in order to get acquainted with the location and layout of the Project Facility site and accordingly prepare their Bids.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the applicable laws or other laws of India for the time being in force and the Courts at Shimla alone shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

- 6.2 HPIDB and/ or the Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (i) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- (ii) consult with any Bidder in order to receive clarification or further information;
- (iii) pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information or documents, as deemed fit by HPIDB and/or the Authority at its sole discretion;
- (iv) retain any information and/ or evidence submitted to HPIDB and/ or the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- (v) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases HPIDB and/or the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.



APPENDICES

*Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court
in front of Vending Complex near Lift, Shimla on PPP Mode*



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

Dated:

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

Sub: RFP for “Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode”

Dear Sir,

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

*Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court
in front of Vending Complex near Lift, Shimla on PPP Mode*



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

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



Attorney for signing of Bid and the Power of Attorney for Lead Member of Joint Venture/ Consortium, as per format provided at **Appendix II and III** respectively of the RFP, are also enclosed.

- 16) I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by HPIDB or the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
- 17) I/ We agree and undertake to abide by all the terms and conditions of the RFP document including the Concession Agreement and its Schedules, Addendum/ Corrigendum (if any).
- 18) {In case of a single entity}
In the event I am declared as the Selected Bidder, I agree to enter into a Concession Agreement in accordance with the Draft Concession Agreement prior to the Bid Due Date. I agree not to seek any changes in the aforesaid draft and agree to abide by the same.
- OR*
- {In case of a Joint Venture/ Consortium}
In the event of we being declared as the Selected Bidder, we agree to incorporate an appropriate special purpose vehicle in the form of a company under the Companies Act, 2013 and enter into a Concession Agreement in accordance with the draft Concession Agreement prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same. Further, we agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Concession Agreement till the end of the Agreement Period in terms thereof.
- 19) I/ We have studied all the Bidding Documents carefully and also surveyed the Project Facility site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by HPIDB or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
- 20) I/ We offer a Bid Security of **Rs.5,00,000/- (Rupees Five Lakhs Only)** to HPIDB in accordance with Clause 2.21 of the RFP Document.
- 21) I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project/ Concession is not awarded to me/us or our Bid is not opened or rejected.
- 22) I/ We agree to pay Annual Concession Fee along with any applicable taxes thereon, in accordance with the terms of the Bidding Documents.
- 23) I/We agree to pay the GST and all other applicable taxes to the Central Government, State Government or local/ statutory authorities of the State of Himachal Pradesh for

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

- 24) I/ We have not been debarred/ blacklisted by the Central Govt./State Government, or any entity controlled by it or any local authority including Municipal Corporation Shimla, from participating in any tendering process or otherwise in the last 3 (three) years, and the bar subsists as on the date of Bid.
- 25) I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
- 26) I/ We hereby declare and confirm that I/ we/ any Member of the Joint Venture/ Consortium is not a defaulter of any Bank or Financial Institution and none of my/ our accounts have been declared as Non-Performing Assets by any Bank or Financial Institution in the last 3 (three) years preceding Bid Due Date and presently there is no dispute pending with any Bank or any Financial Institution.

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

Yours faithfully,

(Signature, name & designation of the Authorized Signatory)

Name and seal of the Bidder/ Lead Member

Date:

Place:

Note:

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



DETAILS OF BIDDER/ EACH MEMBER OF JOINT VENTURE/ CONSORTIUM

1. Particulars
 - (a) Name of Bidder/ Member of Joint Venture/ Consortium:
 - (b) Country of incorporation/ registration:
 - (c) Address of the registered office, corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:
 - (e) PAN No. :
 - (f) GST No. :
2. Brief description of the entity including details of its main lines of business and proposed role and responsibility in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for HPIDB:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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

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

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

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

Name of Bidder/ member of Joint Venture:

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

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

**TECHNICAL CAPACITY OF THE BIDDER***(Refer to Sub-Clause 2.2.2 (A) of the RFP)***Format for demonstrating experience of operations, management and maintenance in respect of Eligible Business Venture(s)****Name of Bidder/ Joint Venture Member:**

Name of the Eligible Business Venture	
Location of the Eligible Business Venture	
Seating capacity	
Date of commencement of operations by the Bidder/ Member of Joint Venture	
No. of years since the abovesaid Business Venture is operational continuously	
Brief description of the kind of cuisine/ food/ beverages and facilities being provided at the Eligible Business Venture	
Self-owned or being operated as a Franchisee/ Lessee/ Licensee	
Whether part of some National or International or local chain of cafés/ restaurants/ hotels/ resorts	

Note:

1. *The date of commencement of operations and number of years/ months of operation, management & maintenance of the Eligible Business Venture as on the Bid Due Date needs to be certified by the Statutory Auditor/ Chartered Accountant of the Bidder as per the format provided below.*
2. *The aforesaid certificate to be provided on the letter-head of the Statutory Auditor/Chartered Accountant of the Bidder/ Member of the JV/ Consortium.*
3. *Copy of the valid License to operate the Eligible Business Venture from the concerned competent authority to be annexed with this form.*
4. *Copy of valid star category certification issued by the Ministry of Tourism, Government of India for 3 star or above categorization, if applicable.*

Certificate from the Statutory Auditor/ Chartered Accountant⁴

⁴ Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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

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

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN:

Date:

Place:



FINANCIAL CAPACITY OF THE BIDDER
(Refer to Sub-Clause 2.2.2 (B) and 2.2.2 (C) of the RFP)

(to be provided on the letter-head of the Statutory Auditor/ Chartered Accountant)

To,

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

Bid for: **“Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode”**

Dear Sir,

We are/ I am the Statutory Auditor/ Chartered Accountant of M/s _____ (name of Bidder/ Lead Member of Joint Venture) having its office at _____ (address of the registered office of the Bidder/ Member of Joint Venture).

As per the Books of Accounts of the aforesaid Bidder/ Lead Member of Joint Venture, it is certified that the **positive Net-Worth** as on March 31, 2023 is Rs. _____ (Rupees in words). The methodology adopted for calculating such Net Worth is as per Sub-Clause 2.2.3 of the RFP.

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

Name of the Authorised Signatory:

Designation:

Name of the Audit firm:

UDIN:

Date:

Place:

Note:

1. Audited Balance Sheets, Financial Statements, Profit & Loss statements, ITRs of the Bidder (of each Member in case of a Joint Venture) for the FY 2022-2023

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shall be enclosed.

2. The Bidder/ each Member of the Joint Venture shall provide this Annex-III on its Statutory Auditor's / Chartered Accountant's letter-head.



STATEMENT OF LEGAL CAPACITY⁵

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

Ref.

Date:

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

Bid for: **“Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode”**

Dear Sir,

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

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

I agree/ We have agreed that (*insert individual's name*) will act as my/ our representative/ will act as the representative of the Joint Venture*, who has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter, documents etc. as may be required to be submitted and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the Authorised Signatory)

For and on behalf of.....

**Please strike out whichever is not applicable.*

⁵ Not required to be submitted where the Bidder is a sole proprietor who is himself/ herself signing the Bid as the Authorized Signatory

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APPENDIX-II

Power of Attorney for signing of Bid

(Refer Sub-Clause 2.2.4)

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

Know all men by these presents, I/ we..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), son/ daughter/ wife of and presently residing at, who is presently employed with me/ us/ the Lead Member of our Joint Venture and holding the position of, as my/ our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the “**Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode**”(the “**Project**”) to the Himachal Pradesh Infrastructure Development Board (the “**HPIDB**”) including but not limited to signing and submission of all Bids and other documents and writings, participate in pre-bids and other conferences and providing information/ responses to HPIDB, presenting us in all matters before HPIDB and/ or the Municipal Corporation, Shimla, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with HPIDB or the Municipal Corporation, Shimla in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/ or till the entering into of the Concession Agreement with the Municipal Corporation, Shimla.

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

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2023

For
(Signature, name, designation and address of Executant)

Accepted

.....
(Signature)

(Name, Title and Address of the Attorney)

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



(Notarised with stamp of Notary Public)⁶

Notes:

- 1. 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.*
- 2. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 3. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

⁶ Stamp paper for executing this Power of Attorney and the Notary should be of the same place.
*Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court
in front of Vending Complex near Lift, Shimla on PPP Mode*



APPENDIX-III

Power of Attorney for Lead Member of Joint Venture/ Consortium

(Refer Sub-Clause 2.2.4 of RFP)

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

Whereas the Himachal Pradesh Infrastructure Development Board (“**HPIDB**”) has invited Bids from interested parties for the “**Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode**” (the “**Project**”)

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2023

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

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

Accepted

.....
(Signature)

(Name, Title and Address of the Attorney)

(Notarised with stamp of Notary Public)⁷

Notes:

1. *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.*
2. *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders’ resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
3. *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

⁷ Stamp paper for executing this Power of Attorney and the Notary should be of the same place.
Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



APPENDIX-IV

Joint Bidding Agreement

(Refer Sub-Clause 2.2.5 (vi) of RFP)

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 2023 at
.....

AMONGST

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

AND

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

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

WHEREAS,

- (A) Himachal Pradesh Infrastructure Development Board, represented by its General Manager having its principal office at New Himrus Building, Himland, Circular Road, Shimla – 171001, India (hereinafter referred to as the **“HPIDB”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has been appointed as Nodal Agency by the Municipal Corporation, Shimla for undertaking bidding process for **“Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode”** (the **“Project”**).
- (B) HPIDB has invited Bids (the **“Bids”**) by its Request for Proposal dated (the **“RFP”**) for upgradation, operation, management and maintenance of the **Project**;
- (C) **The Municipal Corporation, Shimla** acting through its Commissioner (the **“Authority”**) will sign the Concession Agreement with the Operator;

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



- (D) The Parties are interested in jointly bidding for the Project as members of a Joint Venture/ Consortium and in accordance with the terms and conditions of the RFP document and other Bid Documents in respect of the Project, and
- (E) It is a necessary condition under the RFP document that the members of the Joint Venture shall enter into a Joint Bidding Agreement (the “**Joint Bidding Agreement**”) and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretations

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

2. Joint Venture

- 2.1 The Parties do hereby irrevocably constitute JV⁸ (the “**Joint Venture**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly.
- 2.3 The Party of the First Part shall be the Lead Member of the Joint Venture and shall have the Power of Attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding process and until the Agreement Date (as defined under the Concession Agreement) when all the obligations of the Operator/ SPV shall become effective.

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared as the Selected Bidder and awarded the Project, it shall get the above-named JV incorporated and registered as a special purpose vehicle (the “**SPV**”) as a company under the Companies Act, 2013 while retaining/ subscribing to the same share/ contribution as specified in Clause 6 below, for entering into a Concession Agreement with the Authority and for performing all its obligations as the Operator in terms of the Concession Agreement for the Project.

4. Role of the Parties

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

- (a) Party of the First Part shall be the {Financial Member of the Joint Venture}⁹;

⁸ Name of JV

⁹ Retain as applicable

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- (b) Party of the Second Part shall be {Technical Member of the Joint Venture}¹⁰.

5. Joint and Several Liability

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

6. Share of the Members in the SPV

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

First Party: ...%

Second Party: ...%

- 6.2 The Parties undertake that the Parties specified in Clause 6.1 above shall hold 100% share (including any securities that are convertible into shares) in the SPV with Lead Member holding at-least 51% share or contribution and other member holding at-least 26% share or contribution until the 5th Anniversary of the Commercial Operations Date and further both the Members of the Joint Venture shall not hold less than 51% share or contribution till the end of Concession Period with Lead Member holding at-least 26% share/ contribution.

- 6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

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

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) the execution, delivery and performance by such Party of this Joint Bidding Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Joint Bidding Agreement for the delegation of power and authority to execute this Joint Bidding Agreement on behalf of the Joint Venture Member is annexed to this Joint Bidding Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;

¹⁰ Retain as applicable

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



- (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association or charter documents, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Joint Bidding Agreement;
- (c) this Joint Bidding Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Joint Bidding Agreement.

8. Termination

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

9. Miscellaneous

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

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



SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

(Notarised)

Notes:

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



APPENDIX-V

Letter Comprising the Financial Bid
(Refer Sub-Clause 1.2.6)

Dated:

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

Sub: Bid for “Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of vending complex, near Lift, Shimla on PPP Mode”

Dear Sir,

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

1. I/ We hereby submit our Bid and offer to pay **Annual Concession Fee of Rs..... (Rupees in words) + GST** to the Authority i.e. Municipal Corporation, Shimla, commencing from the First ACF Payment Date (*as defined in the Concession Agreement*) for the concession granted in relation to the Project of the Food Court as per the terms and conditions contained in the Concession Agreement. The Annual Concession Fee will increase @ 5% (five percent) annually over the previous value of Annual Concession Fee every year till 3rd Anniversary of the First ACF Payment Date and 10% (ten percent) every year thereafter i.e., from 4th Anniversary of First ACF Payment Date, over the previous year’s value, till the end of the Concession Period. The mode and manner of payment of the Annual Concession Fee shall be as specified in the draft Concession Agreement.
2. I/We agree to bear all expenses and pay all applicable taxes, duties, levies, etc. to the Central Government, State Government and/ or local authority, as the case may be, for undertaking the aforesaid Project in accordance with the Bidding Documents.
3. I/ We hereby declare to undertake the aforesaid Project in accordance with the terms & conditions of the Concession Agreement and the Bidding documents.

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

Yours faithfully,

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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

Place:

Name and seal of Bidder/ Lead Member

HPIDB-Website 20-11-2023



APPENDIX-VI

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

B.G. No.

Dated:

1. In consideration of you, the General Manager, Himachal Pradesh Infrastructure Development Board, having its office at New Himrus Building, Himland, Circular Road, Shimla - 171001 (hereinafter referred to as the “**HPIDB**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of Mr./Ms./M/s..... {a company registered under the Companies Act, 1956/ 2013/ LLP/ Partnership Firm/ Sole Proprietorship Firm registered under the relevant laws of India} and having his/her/its {registered office} address at {and acting on behalf of its Joint Venture/ Joint Venture¹¹} (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/ their executors, administrators, successors and assigns), in respect of the “**Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode**” (hereinafter referred to as the “**Project**”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as “**Bidding Documents**”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of the RFP Document (hereinafter referred to as the “**Guarantee**”), irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to HPIDB an amount of **Rs.5,00,000/- (Rupees Five Lakhs only)** as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by HPIDB stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the aforesaid amount due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of HPIDB is disputed by the Bidder or not, merely on the first demand from HPIDB stating that the amount claimed is due to HPIDB by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set-forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as

¹¹ Applicable only in the case of Bidder applying as Joint Venture/ Joint Venture.

Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



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.5,00,000/- (Rupees Five Lakhs only)**.

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date and for the claim period as prescribed by law, or for such extended period as may be mutually agreed between HPIDB and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that HPIDB shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of HPIDB that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between HPIDB and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, HPIDB shall be entitled to treat the Bank as the principal debtor. HPIDB shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to HPIDB, and the Bank shall not be released from its liability under these presents by any exercise by HPIDB of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of HPIDB or any indulgence by HPIDB to the said Bidder or by any change in the constitution of HPIDB or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.



10. It shall not be necessary for HPIDB to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which HPIDB may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of HPIDB in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **Rs.5,00,000/- (Rupees Five Lakhs Only)**. The Bank shall be liable to pay the said amount or any part thereof only if HPIDB serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date and claim period as prescribed by law)].
14. This Bank Guarantee no., dated shall also be operative at Shimla, Himachal Pradesh and if invoked, be encashable at the [name of the Bank and its branch at Shimla, Himachal Pradesh], branch code no.:

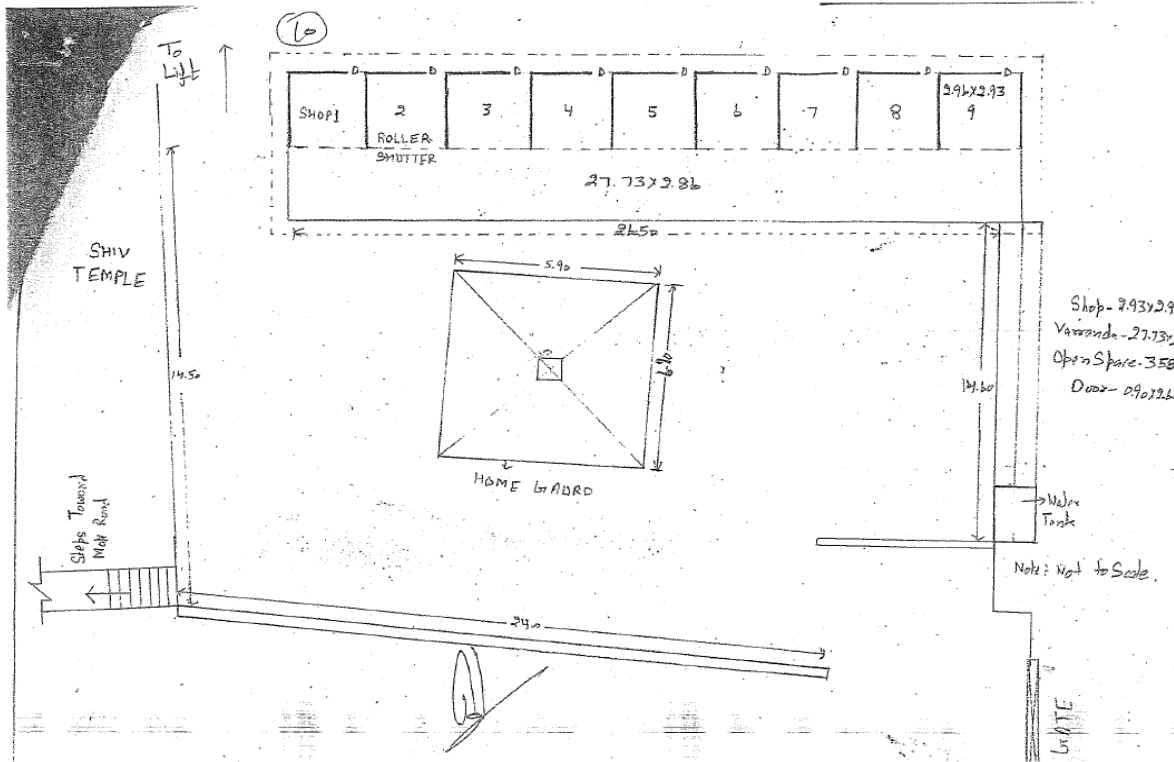
Signed and Delivered by Bank

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

(Signature of the Authorized Signatory)

(Official Seal)

ANNEXURE-A Site Map



Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla on PPP Mode



VOL-II

DRAFT CONCESSION AGREEMENT

FOR

**SELECTION OF AN OPERATOR FOR UPGRADATION, OPERATION,
MANAGEMENT AND MAINTENANCE OF FOOD COURT IN FRONT OF VENDING
COMPLEX NEAR LIFT, SHIMLA ON PUBLIC PRIVATE PARTNERSHIP MODE**



Municipal Corporation Shimla

November 2023





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DRAFT CONCESSION AGREEMENT

This Concession Agreement (the “**Agreement**”) is entered into on this the [■] day of [■], 2023 at Shimla, Himachal Pradesh.

AMONGST

1. **The Municipal Corporation, Shimla**, acting through its **Commissioner** and having its office at Old Judicial Complex, Near DC Office, The Mall, Shimla, Himachal Pradesh - 171001(hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the subject or the context include its successors) of One Part;

AND

2. {M/s [insert the name of the Selected Bidder], a/ an [Company/ Partnership Firm/ Sole proprietorship/ LLP] {incorporated/ registered under the [name of the statute under which incorporated]} and having his/ her/ its registered office at [insert address of the registered office], acting through his/ her/ its [designation], [duly authorized in this behalf by way of Power of Attorney/ board resolution dated] (hereinafter referred to as the “**Operator**” which expression shall unless repugnant to the subject or the context include its successors) of the Other Part.}¹

OR

Ms. _____ [insert the name of the SPV], a company [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/ Board Resolution dated] (hereinafter referred to as the “**Operator**” which expression shall unless repugnant to the subject or the context include its successors) of the Other Part.}²

The **Authority** and the **Operator** are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS:

- A. The Municipal Corporation Shimla is owner and in possession of 9 (nine) shops in raw condition along with veranda and open space admeasuring 4,491 sq. ft. approx., located near Aajivika Bhawan in front of Vending Complex near lift (to Mall Road) on Circular Road, Shimla, Himachal Pradesh;
- B. The Municipal Corporation Shimla is desirous of developing the aforesaid site into a Food Court to cater to the local residents and burgeoning number of tourists visiting the city of Shimla throughout the year and lack of good and branded eating places on

¹ Applicable in case where the Selected Bidder is a single entity and does not opt to incorporate an SPV to implement the Project

² Applicable in case where the Selected Bidder is a Joint Venture



the main Cart Road by engaging private sector entrepreneur through Public Private Partnership (PPP) on Operation, Management and Maintenance (O&M) basis;

- C. The Authority through Himachal Pradesh Infrastructure Development Board (“**HPIDB**”) had invited bids for the “**Selection of an Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, Himachal Pradesh on Public Private Partnership (PPP) mode**” (the “**Project**”) through an open, competitive bidding process for the implementation of the Project, from eligible Bidders, including inter alia **M/s** *[name of the Selected Bidder]* by issuing the Request for Proposal (“**RFP**”) document dated2023 containing inter alia the minimum qualification requirements for a Bidder, the proposed technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project;
- D. On evaluation of the submitted bids, {*M/s* *[name of the Selected Bidder]* or *JV* *[name of the JV]* with *M/s* *being the Lead Member and M/s.*, *being the other Member of the JV,*} was found to have quoted the highest amount of Annual Concession Fee (for first year) of Rs...../- (Rupees..... Only) which was accepted by HPIDB. **M/s**..... *[name of the Selected Bidder]* was declared as the “**Selected Bidder**” and issued the Letter of Award No. dated (“**LOA**”) to *[name of the Selected Bidder/ JV]* requiring the Selected Bidder/ JV to inter alia:
- i. furnish the Performance Security by way of an unconditional and irrevocable Bank Guarantee in favour of “The Commissioner, Municipal Corporation, Shimla” within 21 (twenty-one) days from the date of issuance of the LOA;
 - ii. *{to incorporate a special purpose vehicle (“SPV”) in the form of a private limited company under the Companies Act, 2013 and to furnish to HPIDB all the charter/ constitutional documents of the said SPV along with supporting Board Resolutions and other documents as required by HPIDB, prior to signing of the Concession Agreement}*³;
 - iii. execute this Agreement within 45 (forty-five) days of the date of issue of the LOA pursuant to complying with the aforesaid requirements at sl. no. (i) & (ii)⁴.
- E. The Selected Bidder has furnished the requisite Performance Security by way of an unconditional and irrevocable Bank Guarantee No. dated from Bank for an amount of Rs. 50,00,000./- (Rupees Fifty Lakhs only) in favour of “**The Commissioner, Municipal Corporation, Shimla**”.
- F. *{The Selected Bidder being a Joint Venture vide its letter dated has informed that it has promoted and incorporated <<insert name of SPV>> as a (private limited company under the Companies Act, 2013), for undertaking the Project and has requested HPIDB to accept the Operator as the entity which shall*

³ Mandatory in case where the Selected Bidder is a Joint Venture

⁴ Requirement at sr. no. (ii) mandatory only in case the Selected Bidder is a Joint Venture



undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the right to enter into this Concession Agreement pursuant to the LOA for undertaking the Project. The Selected Bidder has also furnished to HPIDB all the charter/ constitutional documents of the said SPV along with supporting Board Resolutions and other documents as required by HPIDB, prior to signing of the Concession Agreement.

- G. *The Operator by its letter dated to HPIDB, has also joined in the said request of the Selected Bidder, to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the right to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.}*⁵

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

1. Definitions and Interpretation

1.1 Definitions

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

“**Accounting Year**” means the Financial Year or such period as may be changed by the Government of India, if any;

“**ACF Due Date**” shall have the meaning ascribed to it under Clause 4.1.3 of the Concession Agreement;

“**First ACF Payment Date**” means the date on which the Operator shall be liable to pay the first Annual Concession Fee to the Authority in terms of this Agreement. This date shall be earlier of the (i) date falling on the first day of the 4th month (as per English calendar) reckoned from the Compliance Date whether or not the Operator has achieved the Commercial Operations Date; or (ii) Commercial Operations Date;

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

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

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

⁵ Applicable only in case where the Selected Bidder incorporates a SPV to implement the Project



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

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

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

“**Applicable Permits**” means all approvals, clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Operator under Applicable Laws in connection the Project during the subsistence of this Agreement and includes but not limited to the license to operate from the concerned Competent Authority;

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

“**Authority**” shall mean the Municipal Corporation, Shimla, acting through its Commissioner and having its office at Old Judicial Complex, Near DC Office, The Mall, Shimla, Himachal Pradesh - 171001;

“**Authority’s Event of Default**” shall have the meaning set forth in Clause 15.3.1;

“**Award**” shall have the meaning set forth in Clause 18.3.2;

“**Bank Guarantee**” means an irrevocable and unconditional bank guarantee issued by a Bank in favour of “**The Commissioner, Municipal Corporation, Shimla**” and furnished by the Operator to the Authority for guaranteeing the due performance of the obligations of the Operator under this Agreement. Here, the term “**Bank**” means any Nationalized/ Scheduled Bank in India acceptable to the Authority;

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

“**Bid Documents**” means the RFP, and any addenda/ corrigendum issued subsequently by HPIDB before the Bid Due Date, and this Agreement including its Schedules;

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

“**Commercial Operations**” means the commercial utilization of the Project Facility in terms of this Agreement after issuance of license to operate by the concerned



Competent Authority, for provisioning of facilities and services to the public in lieu of charging, demanding, collecting and appropriating the charges for food & beverages sold and other services provided;

“**Commercial Operations Date**” or “**COD**” means the date on which the permission/ license to operate is issued by the concerned Competent Authority to the Operator in terms of Clause 3.5;

“**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 including the Municipal Corporation, Shimla or district administration or any other sub-division thereof, with authority over any aspects of implementation of the Project or having jurisdiction over all or any part of the Project Facility/ Project Site or the performance of all or any of the services or obligations of the Operator under or pursuant to this Concession Agreement;

“**Complaint Register**” shall have the meaning ascribed to it in Clause 6.6.1;

“**Complainant**” shall have the meaning ascribed to it in Clause 6.6.1;

“**Compliance Date**” shall have the meaning ascribed to it in Clause 5.7;

“**Concession**” shall have the meaning ascribed to it in Clause 3.1.1;

“**Concession Period**” means the period commencing from the Compliance Date and ending on the Handback Date;

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

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

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

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

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

“**Default Notice**” shall have the meaning set forth in Clause 15.1;

“**Dispute**” shall have the meaning set forth in Sub-Clause 18.1.1;



“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 18;

“Divestment Requirements” means the conditions set forth under Clause 16.1 which are required to be conformed/ complied to by the Operator at the time of Termination of this Agreement;

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

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

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

“Food Court” means the Project Facility to be set up and operationalized by the Operator at the Project Site in terms of this Agreement *inter alia* consisting of small restaurants and multiple food & beverage vendors.

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

“FSSAI” means the Food Safety and Standards Authority of India established under the Food Safety and Standards Act, 2006, which is the authority regulating the safety, standards and hygiene of food industry in India;

“GOI” means the Government of India;

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

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of Food Court and F&B Business as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;



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

“Handback Date” means the day immediately following the last day of the Concession Period in accordance with the terms of the Concession Agreement;

“HPIDB” means Himachal Pradesh Infrastructure Development Board established under the Himachal Pradesh Infrastructure Development Act, 2001, which is the nodal agency in the State of Himachal Pradesh for facilitating the development of a variety of infrastructure projects on Public Private Partnership (PPP) mode;

“Insurance Cover” shall have the meaning ascribed to it in Clause 6.5.1;

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

“Layout Plan” shall have the meaning set forth in Clause 3.4;

“Lenders” means financial institutions, banks, debenture holders, and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Operator under any of the Financing Agreements for meeting all or any part of the capital cost of the Project;

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

“Licensed Premises” shall have the meaning set forth in Sub-Clause 10.1.1;

“LOA” shall have the meaning as set forth in Recital D of this Agreement;

“Lock-in Period” shall have the meaning ascribed to it in Clause 6.8.1(i);

“Material Adverse Effect” means consequences of events outside the control of the Affected Party, which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements;

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

“O&M” or “Operations & Maintenance” means the running, operation, management and maintenance of the Project Facility/ Food Court at the Project Site and includes all matters connected with or incidental to such operation, management and maintenance; provision of services and facilities; and collection of revenue from



sale of food & beverage items; and rendering of services to the customers/ visitors in accordance with the provisions of this Agreement;

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

“**O&M Inspection Report**” shall have the meaning set forth in Clause 11.3.1;

“**Operator’s Equipment**” means all the equipment, furnishings, furniture, fitting & fixtures, machinery, mechanical/ electrical appliances, apparatus, hardware/ software, various things, items, consumables, etc. of whatever nature, required for the Upgradation, furnishing, setting-up, operation, management and maintenance of the Project Facility and the remedying of any defects (if any);

“**Operator’s Event of Default**” shall have the meaning set forth in Clause 15.1;

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

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

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

“**Project**” means, subject to the provisions of this Agreement, (i) carrying out of Upgradation Works including all activities incidental thereto at the Project Site without disturbing the original structure(s); (ii) setting-up, operation, management & maintenance of the Project Facility; (iii) determining, collection and appropriation of the Project Revenues; (iv) insurance of the Project Facility for the purpose of providing the services on a continuous basis; and (v) Handback of the Project Site to the Authority on Handback Date, in accordance with the provisions of this Agreement.

“**Project Assets**” means all physical and other assets, both tangible and intangible, relating to and forming part of the Project Site including, but not limited to: (i) rights over the Project Site in the form of license, Right of Way or otherwise; (ii) tangible assets such as civil works; (iii) any new infrastructure utilities created by the Operator on the Project Site; (iv) any fittings & fixtures which are embedded/ fixed/ attached to any part of the structures of the Project Site which if removed would cause irreparable damage to the existing structures; (v) financial assets, such as security deposits made for securing electricity & water supply, etc.; (vi) insurance proceeds; (vii) any existing movable or immovable assets, fittings or fixtures belonging to the Authority as per inventory prepared pursuant to joint inspection; and (viii) any valid Applicable Permits and authorizations relating to or in respect of the Project;

“**Project Facility**” shall mean the Food Court in front of vending complex near Lift to be developed operated, managed and maintained by the Operator in terms



of this Agreement. The term Project Facility also includes the internal utilities, drainage facilities, electrical system, etc. already constructed/ installed by the Authority or to be procured, installed and set-up by the Operator including provisioning of all the amenities and facilities; its repair, rectification, replacement and renovation from time to time, for the purpose of implementation of the Project in terms of this Agreement;

“**Project Manager**” means the Operator’s representative appointed in terms of Clause 5.3 of this Agreement;

“**Project Revenues**” means all charges, costs, fees and other amounts by whatever name called earned by the Operator from sale of food and beverages, from advertisements, from organizing of events and parties, proceeds from sale of products, consumables, etc. at the Project Facility and sub-license fee collected from the vendors operating the food counters/ booths/ eateries at the Food Court;

“**Project Site**” or “**Site**” means the open area measuring 4,491sq. ft. near Aajivika Bhawan located in front of vending complex, near Lift on Circular Road Shimla which is handed over to the Operator on license basis along with the existing structures, facilities, fittings & fixtures (both movable and immovable), etc. as listed under **Schedule-A**, over which the Project is to be implemented by the Operator at its own cost and risk in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;

“**Right of Way**” means the right to enter the Project Site and the Project Facility/ Food Court premises there at in order to operate, manage and maintain the Project in accordance with the provisions of this Agreement;

“**RFP**” shall have the meaning as set forth in Recital C of this Agreement;

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

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1.1 of this Agreement;

“**Selected Bidder**” shall have the meaning as set forth in Recital D of this Agreement;

“**SPV**” shall have the meaning as set forth in Recital D (ii) of this Agreement;

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

“**Third Party Agreements**” means all agreements entered into between the Operator and third Persons such as vendors, sub-contractors etc. for provisioning of any



goods or services to the Operator in relation to the Project Facility;

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

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

“**Upgradation Period**” means the period set forth in Clause 3.4;

“**Upgradation**” means and includes carrying out the development works for upgrading the Project Site for running it as a Food Court, obtaining power connections (for which Municipal Corporation, Shimla will coordinate with or assist the Operator); ensuring measures for firefighting, ensuring water connection, sewerage facility, waste management, etc. for which charges are to be borne by the Operator, obtaining food licenses from the concerned Competent Authority and carrying out such other works of furnishing, equipping, refurbishment, replacement, provisioning of furniture, equipments & appliances, installation of electrical & mechanical appliances, fittings & fixtures, etc., as the Operator may undertake during the Upgradation Period in accordance with the terms of this Concession Agreement and Good Industry Practice for operationalizing the Project Facility in all respects.

“**Upgradation Works**” means and includes all the works and things necessary for Upgradation and to achieve Commercial Operations of the Project in accordance with this Agreement.

“**Vesting Certificate**” shall have the meaning set forth in Clause 16.5;

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bylaws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be



construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;

- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (j) the words importing singular shall include plural and vice versa;
- (k) references to any gender shall include the other and the neutral gender;
- (l) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (m) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (n) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (o) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by



any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;

- (p) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (q) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - (r) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (s) any reference to build shall mean construct or develop and vice-versa unless the context otherwise requires.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Operator to the Authority and/ or the agency or person appointed by the Authority shall be provided free of cost.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of Agreements and Errors/Discrepancies

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

- (a) this Agreement including the Schedules thereto;



- (b) any Addendum/ Corrigendum issued by HPIDB
- (c) RFP Document; and
- (d) all other agreements, minutes of the meetings and documents forming part hereof;
i.e., the agreement at (a) above shall prevail over the agreements and documents at (b) and (c) above and (b) shall prevail over all documents in (c) above.

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

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

2. Scope of the Project

2.1.1 The scope of the Project to be undertaken by the Operator at its cost during the Concession Period shall *inter alia* mean and include the following (the “**Scope of the Project**”):

- (i) setting-up a classy Food Court at the Project Site by making provision for popular brands in the food & beverage industry, high quality services, good ambience and seating arrangement as per Good Industry Practice;
- (ii) carrying out Upgradation Works at the Project Site at its cost and expense, as per the provisions of this Concession Agreement using new and premium quality materials for furniture, furnishings, fittings & fixtures, etc. In addition to this, the Operator shall also be responsible for the maintenance of the internal structures at the Project Site;
- (iii) carrying out the O&M and performance of other Obligations as specified in this Agreement;
- (iv) seeking all approvals, Applicable Permits, registrations and licenses for smooth operations of the Project Facility including, but not limited to fire safety, FSSAI food business license, etc.; and
- (v) performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.



3. Grant of Concession

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Operator the concession set forth herein including the exclusive right, authority and authorization during the subsistence of this Agreement, to plan, furnish, set-up, operate, maintain and manage the Project (the “**Concession**”) for the period specified in Clause 3.3 and enjoy its commercial benefits. The Operator hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 The Concession hereby granted shall oblige or entitle (as the case may be) the Operator to the following:
- (a) To implement and complete the Project in terms of this Agreement;
 - (b) To operate and maintain and regulate the use of the Project Facility by third parties;
 - (c) To enjoy complete and uninterrupted access, Right of Way and right to use the Project Site and the Project Facility in pursuance of the declaration of license granted in favour of the Operator by the Authority;
 - (d) To enjoy exclusive right and authority to carry out the activities in relation to the Food Court strictly as specified in the Concession Agreement during the Concession Period;
 - (e) To demand, collect and appropriate Project Revenues as per the provisions of the Concession Agreement and the Schedules hereof;
 - (f) To operate, manage and maintain the Project Facility/ Food Court including the Project Assets without any limitation or restriction other than those expressly set out in this Agreement and/or the mutually agreed terms provided by way of directions from the Authority;
 - (g) To carry the O&M of usable space and common facilities including the circulation area at the project Site;
 - (h) To sub-license the use of the Project Facility to the vendors/ retailers/ food chain operators and thereupon determine, demand, levy, collect, enforce, retain and appropriate charges periodically and revise the same in conformity with the prevailing market rates; and
 - (i) To bear and pay all expenses, costs and charges incurred for fulfillment of all the Operator’s obligations as set out under this Agreement;
 - (j) To exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for setting-up, operating, managing, and maintaining the Project.



- 3.1.3 The use of standards and specifications for use of material, temporary construction technology and operations shall adhere to national/ international standards and the best practices in the industry.
- 3.1.4 The Operator shall provide necessities like drinking water, standby power supply through DG set(s), fire-fighting facility as per applicable norms of Competent Authority, and security on the Project Site.
- 3.1.5 The Operator shall not be entitled to allow the use of the Project Facility by any other Person or for any purpose other than as specified in this Agreement. The Operator either itself or otherwise shall not allow gambling, betting or carry out any activity that is unlawful/ illegal or deemed unlawful under any Applicable Laws or legislation. Further, the Operator shall not stock, store, exhibit or sell any items which are against public order, morality or decency.
- 3.1.6 The Operator shall at its cost take all Applicable Permits and approvals from the Competent Authority including Fire NOC from the office of the Chief Fire Officer, etc. and the Authority shall in no way be liable for the same.
- 3.1.7 Nothing contained herein, including the act of granting Concession and permission to operate the Project Facility shall vest or create any proprietary interest in the Project Facility or the Project Site or any part thereof including the land, any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of the Operator or any other person claiming through or under the Operator. The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project Facility or the Project Site or the underlying land forming part of the Project Site and/ or the Project Assets. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement. However, for the purpose of financing the Project, subject to Clause 19.1 of this Agreement and pursuant to receipt of the Authority's prior written approval/ consent, the Operator shall have the right to hypothecate, assign or otherwise encumber to Lenders its rights and interests in the (i) the Project agreements; and (ii) the cash flows generated by it from the Project Revenues from the operations of the Food Court and to create a security in such rights and interests in favour of the Lenders. Notwithstanding anything contained above, the Operator shall neither create, nor permit creation or subsistence of any Encumbrance in the Project Facility or any part of the Project Site and such Lenders shall not have any interests or rights over the title and/or possession, whether actual or constructive, over the Project Site including the Project Facility/ Food Court and any immovable assets present thereat.

3.2 Acceptance by the Operator

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

3.3 Concession Period

- 3.3.1 Subject to and in accordance with the provisions of this Agreement, the Concession set *Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode*



forth in Clause 3.1 is hereby granted by the Authority to the Operator for a period of **10 (ten) years** commencing from the Compliance Date including any extension thereof, during which the Operator is authorized to execute and implement the Project in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall be inclusive of the Upgradation Period.

3.3.2 Not less than 3 (three) months prior to the expiry of the initial Concession Period of 10 (ten) years, upon written request from the Operator seeking extension in Concession Period, the Authority may in its sole discretion consider such request of the Operator subject to the conditions that the Operator is not in default of any of its obligations under the Agreement, is running the Project in a satisfactory manner and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project. Provided however, such extension of Concession Period shall not exceed a period of **5 (five) years**. Provided however, any extension in Concession Period in accordance with this Sub-clause 3.3.2 shall be subject to same terms and conditions as contained in this Agreement.

3.3.3 It is hereby made clear that:

- i. In the event of the Concession Period being extended by the Authority in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended; and
- ii. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.

3.3.4 At the end of the Concession Period or early Termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement to the Operator shall cease to have effect and the Project Site shall revert to the Authority, clear and free of any Encumbrances, without any obligation of the Authority to pay or adjust any consideration or other payment payable to the Operator. The Operator shall be entitled to take away/ remove all its movable assets that are brought and incorporated into the Project Facility by it, at its own cost, without damaging the existing structures of the Project Facility, Project Site or any part thereof. Provided however, any assets, fittings or fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site which if tried to be removed or dislocated, can cause damage to any structure present at the Project Site or the Project Facility, the same cannot be removed by the Operator and shall be mandatorily handed over to the Authority free of cost on the Handover Date.

3.4 Submission of the Layout Plan and commencement of the Upgradation Period

3.4.1 Upon handing over the Project Site, the Operator shall submit a Layout Plan to the Authority within **7 (seven) days** along with complete set of requisite design & drawings in hard copies as well as in such digital form as acceptable to Authority, for its prior consent/ approval in respect of proposed alterations in the internal works to be carried out on the Project Site including ducting for air-conditioning/ heating (if required), ducting for kitchen exhaust, undertaking minor civil works which do



not disturb the original structure(s) handed over, disposal of waste and/ or approval for removal of any fittings & fixtures (*which does not interfere with or damage the existing structures or interior works*) belonging to the Authority. Any delay in submission of Upgradation Plan, beyond the above-mentioned period, shall entail a penalty of 0.2% (zero point two per cent) of Performance Security per day.

3.4.2 The overall development of the Food Court shall be carried out in line with the approved Layout Plan which is modified and finalized by the Parties as a part of the approval process. The period for carrying out and completing the Upgradation Works in respect of the Project Site handed over to the Operator shall be **03 (three) months** commencing from the Compliance Date (the “**Upgradation Period**”) during which the Operator at its cost shall be mandatorily required to:

- i. complete all the Upgradation Works at the Project Site in accordance with the Layout Plan approved by the Authority and the provisions of this Agreement, so as to make it fully operational in all respects to commence full Commercial Operations;
- ii. ensure use of new and premium quality furnishings, fittings & fixtures and to generally carry out the furnishing of the entire Project Facility in an esthetically appealing and attractive manner;
- iii. maintain, at its cost, the Project Site as is necessary for the efficient progress of the Upgradation Works conforming to Good Industry Practices, for the safe use of the public areas outside the Project Site with no or minimum interruption to the public during the performance of its activities in the Upgradation Period;
- iv. obtain all the Applicable Permits at its own cost that are required for commencing the Commercial Operations and keep all such Applicable Permits and approvals in full force and effect during the Concession Period.

3.4.3 Any structural changes to the existing Project Site as handed over to the Operator may be permitted only pursuant to prior written approval of the Authority. In the event any damage is caused to the existing structures at the Project Facility/ Project Site due to the activities of the Operator, the repairs in respect of such damage shall be undertaken by the Operator at its own risk and cost.

3.4.4 In the event that Upgradation Works are not completed within the period set forth in Sub-Clause 3.4.2 above, for any reason other than Force Majeure or reasons attributable to the Authority or any other Governmental Instrumentality, the Operator shall, pay to the Authority Damages for delay for an amount equivalent to i.e. 0.2% (zero point two per cent) of the Performance Security per day for each day of delay beyond the scheduled date of completion of Upgradation Period until all Works are completed and Commercial Operations in respect of the entire Project Facility can be commenced successfully. Provided that nothing contained in this Sub-Clause 3.4.4 shall be deemed or construed to authorize any delay by the Operator in completing Upgradation Works.

3.5 Commercial Operations Date (COD)

3.5.1 The Project Facility shall be ready for Commercial Operations upon completion of Upgradation Works and obtaining all Applicable Permits including NOC from the

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fire office and license to operate from the concerned Competent Authority for commencing operations at the Project Facility. The date when the license to operate is issued to the Operator by the concerned Competent Authority/ Authority shall be deemed to be the “**Commercial Operations Date**” whereupon the Operator shall be entitled to commence Commercial Operations of the Project Facility in terms of this Agreement.

- 3.5.2 In the event, the Operator is unable to achieve the COD even after a lapse of 180 (one hundred and eighty) days from the Compliance Date unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall have the right to terminate the Agreement for Operator’s Event of Default.

3.6 Licensing the Use of the Project Facility or any Part Thereof

- 3.6.1 The Operator shall have the right to sub-license booths/ service counters/ stalls/ eateries in the Project Facility or part thereof by entering into appropriate sub-license deeds/ agreements. The Operator provide copies of all such sub-license deeds/ agreements entered into, from time to time, with sub-licensees/ vendors operating putting up their food counters/ kiosks/ stalls/ booths/ eateries in the Project Facility/ Food Court, to the Authority, with incorporated clauses, in all such sub-license deeds/ agreements that the period of the sub-license/ agreement shall be co-terminus with the Concession Period and in case of Termination of this Agreement (by efflux of time or pre-mature Termination), all the sub-licensee(s)/ agreements shall be terminated and the Project Site shall be handed back to the Authority, without any liability of the Authority to compensate anyone. The Operator may execute sub-license deeds/ agreements effective from the Commercial Operations Date. The sub-licensee(s)/ vendors shall pay to the Operator, license fees/ consideration by whatever name called, as agreed between them as per their contractual arrangements, into the Project specific designated account of the Operator.

4. Consideration of the Contract

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

4.1 Annual Concession Fee

- 4.1.1 The Operator shall pay to the Authority for the Concession granted a fee annually as quoted by the Selected Bidder/ Operator and accepted by the HPIDB along with applicable taxes thereon including GST applicable on the amount of Annual Concession Fee payable to the Authority (the “**Annual Concession Fee**”).
- 4.1.2 The Annual Concession Fee for the first year of Concession shall be {Rs...../- (Rupees only)}⁶ (plus GST at the applicable rate).

⁶ Insert the figure of Annual Concession Fee mentioned in the Letter of Award issued to the Selected Bidder



The Annual Concession Fee shall escalate at the rate of 5% (five percent) annually over the previous value every year till the 3rd anniversary of the First ACF Payment Date and 10% (ten percent) every year from the 4th anniversary of the First ACF Payment Date, over the previous year's value, till the end of Concession Period.

- 4.1.3 The first Annual Concession Fee shall be paid by the Operator to the Authority on the First ACF Payment Date whether or not the Operator has achieved the Commercial Operations Date. Thereafter, the Annual Concession Fee shall be paid by the Operator on the same date every year along with all applicable taxes, whether payable by the Authority or the Operator (the “**ACF Due Date**”).
- 4.1.4 The payment of Annual Concession Fee and applicable escalation thereon shall be made into the Authority's designated bank account by way of online transfer of funds (as per the particulars thereof to be intimated by the Authority) on the ACF Due Date.
- 4.1.5 In the event of delay of 7 (seven) days beyond the ACF Due Date, in payment of Annual Concession Fee and applicable escalation thereon by the Operator, the Operator shall be required to pay to the Authority, interest at the rate equal to one year SBI MCLR + 4% (four percent) per annum for the entire period of delay starting from ACF Due Date till payment of the due amount of Annual Concession Fee along with interest and applicable escalation thereon. In the case of delay beyond four weeks, it shall be considered as an Operator's Event of Default.

5. Conditions Precedent to the Agreement

5.1 Conditions Precedent

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

5.2 Conditions Precedent of the Authority

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

- (a) issued the Declaration of License in favour of the Operator in terms of Clause 10.1;
- (b) provided to the Operator the access and Right of Way to the Project Site along with all the infrastructure constructed thereon and facilities available there at on an ‘*as is where is*’ basis free of Encumbrances, as demarcated in **Schedule-A**, in accordance with the provisions of Clause 10.1;
- (c) appointed the Nodal Officer in terms of Article 13;
- (d) prior to handing over of the Project Site, within 7 (seven) days from the



Agreement Date, the Nodal Officer appointed by the Authority along with the Project Manager of the Operator shall jointly inspect the Project Site and the existing facility thereon and there at, to prepare and execute an inventory and records of the existing structures, assets, materials and utilities on the Project Site (the “**Joint Inventory - Site**”), and shall further record their quality, condition, functionality, as tabulated below. The Joint Inventory – Site shall be prepared in two counterparts and each counterpart be duly signed and stamped by both the Parties. Each Party shall retain one counterpart. The copy of the Joint Inventory – Site shall be appended under **Schedule-E** to this Agreement.

List of Inventory and condition of the same:

<i>S. No.</i>	<i>Items Description</i>	<i>Unit</i>	<i>Qty.</i>	<i>Location</i>	<i>Remarks on the condition of the handed over items</i>
1.					
2.					
3.					

- (e) reviewed the Layout Plan submitted by the Operator in pursuance of Clause 3.4 of this Agreement and given its comments and observations within a period of 7 (seven) days from receipt of the same from the Operator;
- (f) approved the updated/ modified Layout Plan within 10 (ten) days of the same submitted by the Operator after attending to all the comments, observations and modifications proposed by the Authority; and
- (g) granted Applicable Permits within its power and authority for commencement of Upgradation Works.

5.3 Conditions Precedent of the Operator

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

- (a) opened the Project specific designated bank account in a Nationalized/ Scheduled Bank in Shimla;
- (b) made applications at its own cost for any approvals, Applicable Permits etc. that may be required for commencing Upgradation Works at the Project Site;
- (c) delivered to the Authority a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof;



- (d) appointed a qualified and professionally experienced person (having prior experience of managing similar properties) as its representative who shall be designated as the “**Project Manager**”;
- (e) carried out joint inspection of the Project Site for preparation of Joint Inventory – Site on the date and time fixed by the Authority;
- (f) submitted a Layout Plan in accordance with Clause 3.4 of this Agreement;
- (g) addressed the comments, observations and incorporated the revisions suggested by the Authority within a period of 5 (five) days from receipt of the same from the Authority.

5.4 Obligations to satisfy Conditions Precedent

- 5.4.1 Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above. Upon satisfaction of the Conditions Precedent by each Party, the other Party shall forthwith inform in writing to the other Party.
- 5.4.2 Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

5.5 Non-Fulfillment of the Conditions Precedent

- 5.5.1 In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 5.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, the Authority shall pay to the Operator Damages of an amount equivalent to 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount of upto 5% of the Performance Security.
- 5.5.2 In the event that (i) the Operator does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 5.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the Conditions Precedent under Clause 5.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Operator shall pay to the Authority, Damages of an amount equivalent to 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount of upto 10% of the Performance Security.
- 5.5.3 Once the maximum Damages have been reached and the Operator has not fulfilled all the Conditions Precedent and the Authority has not extended or waived them fully or partially, the Authority shall be entitled to terminate this Agreement without being liable in any manner whatsoever to the Operator or its subcontractors, agents, staff, labour, sub-licensees, vendors, etc. In such a case, the Authority shall forfeit the Performance Security of the Operator.



5.5.4 Upon the Termination of this Agreement, the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances on an *'as is where is basis'*, irrespective of any outstanding claims, disputes etc. whatsoever between the Parties.

5.5.5 Notwithstanding anything contained in this Clause, in the event, the Parties are unable to normalize and agree on the Layout Plan even after the lapse of the time period stipulated in this Article 5 for achieving of Conditions Precedent, the Parties may mutually decide to terminate the Concession Agreement. Upon such Termination, the Project Site shall revert back to the Authority and the Performance Security Bank Guarantee shall be returned by the Authority to the Operator.

5.6 Extension of period for fulfilment of Conditions Precedent

The Parties instead of levying Damages and/ or terminating the Agreement under this Article 5 may mutually agree to extend the time period mentioned hereinabove for the fulfilment of Conditions Precedent with such conditions as deemed fit.

5.7 Commencement of Concession Period

When all the Conditions Precedent specified in in this Article 5 are satisfied or waived, as the case may be, the Parties shall mutually sign a certificate i.e., Certificate of Compliance. The date on which the Certificate of Compliance is signed (the **"Compliance Date"**) shall be the date of commencement of the Concession Period. The format of Certificate of Compliance is annexed as **Schedule-F** to this Agreement.

6. Obligations of the Operator

6.1 General Obligations

6.1.1 Subject to and on the terms and conditions of this Agreement, the Operator shall, at its cost and expense, procure finance for and undertake the setting-up, upgradation, furnishing, equipping, operation, management and maintenance of the Project Facility and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement, which shall also include the applicable central and state legislations the rules, regulations and guidelines made thereunder from time to time to the extent applicable/relevant for the purposes of this Project.

6.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Operator shall, in discharge of all its obligations under this Agreement, conform with and adhere to the principles of Good Industry Practice, applicable from time to time. The Operator shall bear the cost/ expenditure to be incurred on the Upgradation Works and O&M of the Project Facility during the Concession Period.

6.1.4 The Operator shall take approval from the Authority prior to the finalization of the name of the Project. Unless the name negatively affect public sensitivities, the

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Authority shall not unreasonably withhold approval of the name proposed by the Operator.

6.1.5 The Operator shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:

- (a) make, or cause to be made, necessary applications to the relevant governmental agencies with such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, insurances, agreements and permissions for materials, methods, processes and systems used or incorporated into operations of the Project. The Operator shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the vendors for various installations;
- (c) not to cause any damage or adverse impact to the Project Facility or any part thereof. Further, the Operator shall not cause damage to any other infrastructure developed by the Authority and handed over to the Operator or in respect of which right to use or access is provided to the Operator, or any other utilities or nearby buildings/ area developed and maintained by any other authority or Person. In case of any such damage, the repair of the same shall be at the sole cost and expense of the Operator. In the event of any losses that is incurred by the Authority or any other authority, agency or Person, as the case may be, the Operator shall be liable to compensate for the same;
- (d) otherwise as permitted in the approved Layout Plan, not make any changes in the structures, facade of the Project Facility while undertaking Upgradation Works or during O&M Period;
- (e) ensure and procure that the Operator and its sub-contractor, agents, staff, sub-licensees, vendors and their staff shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any Encumbrances, adverse rights or third party rights on the Project Site and also to ensure that the Authority is not adversely affected in any manner;
- (h) make payment of the Annual Concession Fee plus taxes including GST thereon, to the Authority in a timely manner as per provisions of this Agreement;



- (i) be responsible for payment of all taxes, GST, duties, charges, levies including stamp duty and any other statutory charges as may be required to be paid as per statutory requirements from time to time to the GoI, GoHP or local authority;
- (j) provide all assistance to the Authority/ Nodal Officer as may be required for the performance of their duties and services;
- (k) ensure that no goods are stored that are not permitted by law including those of hazardous and explosive in nature that may cause damage to the Project Facility. The Operator shall be liable or responsible for destruction or damage to the Project Facility on account of any acts of commission or omission by it;
- (l) ensure that adequate fire protection systems are installed, checked and serviced. Any loss due to the fire as a result of Operator's activities, to the Project Facility will be borne by the Operator only;
- (m) procure at its own costs, expenses and risk all the services necessary for the operations of the Project Facility including without limitation electricity, water, other services, materials, sewerage, communication lines, sanitation, garbage disposal and pay applicable utility expenses, charges/ rates, including penalties for default in payment, in relation to the use thereof, in the operations, management and maintenance of the Project Facility by the Operator and indemnify/ keep indemnified the Authority in this respect and ensure avoidance of any disruption thereof due to disconnection or withdrawal of any of the aforesaid facility/ies. The Operator shall also make adequate fire safety arrangements;
- (n) ensure that all the furnishings, furniture, fixtures, equipment etc., to be made part of the Project Facility shall be new (and not taken on rent), of high standards and premium quality as per Good Industry Practice and such standards are maintained throughout the Concession Period;
- (o) shall obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice in respect of all the internal furnishings, fittings & fixtures, movable assets, etc. brought by the Operator for the operations of the Food Court. However, the insurance of the building will be done by the Authority in its own name and favour;
- (p) shall have the right to display advertisement boards inside the Project Site, as per the Applicable Laws and generate revenue from it;
- (q) provide adequate security, watch and ward service at the Project Facility to maintain the safety and security of the life and property and make provision for first aid and arranging prompt medical attention in cases of accidents and emergencies;



- (r) shall have the option to advertise the Project in newspapers or through any other mode of communication at own cost;
- (s) 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;
- (t) employ only well-trained persons of integrity after carrying out proper security verification and shall ensure that they are attired in uniforms, bearing name tags or other identification badges;
- (u) be solely and exclusively responsible for the recruitment, transportation, accommodation, payment of the salaries, wages, allowances and other payments to its staff and cost incidental thereto and all taxes, charges, levies, duties payable under the Applicable Laws arising from the respective terms and conditions of their employment of its personnel deployed on the Project Facility under or through whatever legal relationship. The Operator shall be further responsible for obtaining all necessary clearance from the Competent Authorities and compliance with all local and other Applicable Laws and regulations pertaining to the employment of labour/ contractual labour. The Operator shall ensure that all labour laws, rules and regulations are followed and that the Operator shall be the principal employer of the staff, personnel, labour employed by it or by its contractor(s)/sub-contractor(s) on the Project Facility without any liability of the Authority;
- (v) not to create any rights, of whatsoever nature, over the Project Site, Project Assets, Project Facility in favour of any banks or other financing or re-financing entities;
- (w) shall ensure that all the fire hose reels, fire extinguishers, kitchen fire suppression system and all other fire equipment and fire protection systems existing at the Project Site are checked, updated, maintained & serviced regularly i.e., atleast once annually by trained persons of an approved organization authorized by the relevant authorities and a label certifying that the equipment and/ or systems are checked shall be attached to the same. Any loss due to fire at the property will be borne by the Operator; and
- (x) hand over the Project Facility in good condition on the date of Termination of the Concession to the Authority, in accordance with the provisions thereof.

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

6.1.7 The Operator shall not be permitted to carry out any structural changes or modifications to the structures of the Project Site except with the prior written approval of the Authority. However, the Operator will be free to undertake whitewash, paint & polish, as required, (both in the interior and exterior) and routine/



preventive maintenance works in respect of Project Facility. Further, any damage that may be caused to the existing structure at the Project Facility/Project Site due to the activities of the Operator on the Project Site, the repairs in respect of such damage shall be made solely at the risk and cost of the Operator.

6.1.8 The Operator shall not use the Project Site for any activity other than for the purpose for which the Concession is granted in pursuance to this Agreement. However, the following activities shall be strictly prohibited in the Project Facility:

- i. Gambling or betting activities;
- ii. Smoking and sale/ purchase of tobacco and liquor products;
- iii. Wedding ceremonies;
- iv. Any activity that is unlawful / illegal or deemed unlawful under any Indian Act or legislation;
- v. Any activity which is against the moral decency or anti-social; or
- vi. Stocking, storing, exhibiting or selling of any items which are repugnant to the public order, morality or decency.

6.1.9 The Operator may subject to compliance with the rules of the Municipal Corporation Shimla in this regard, display advertisements at the Project Facility/ Food Court that are not indecent or objectionable or against moral decency or prohibited by Applicable Laws.

6.1.10 At any time during the Concession Period, any fitting or fixture/ equipment/ apparatus/ appliances forming part of the Joint Inventory – Site is replaced or removed by the Operator, then the same shall be replaced with a fitting or fixture/ equipment/ apparatus/ appliances which is equal to or superior in quality; further, the Operator shall handover such removed/ replaced fitting or fixture/ equipment/ apparatus/ appliances to the Nodal Officer/ Authority.

6.1.11 In order to collect payment from the users/ visitors, the Operator shall install electronic systems in the Project Facility, including but not limited to computer systems relating to accounts, billings, etc. and ensure they are functioning in a proper manner and are transmitting true and correct data of revenue and expenditure, on a real time basis.

6.1.12 The Operator shall follow a centralized and computerized prepaid system of collection of payment, arising out of sale of over-the-counter items, including but not limited to food and beverages, to the users of food counters/ booths, with the help of smart cards or any other similar tool used for computerized prepaid billing. For further clarity, a user who wishes to buy items or avail services in the Project Facility, shall instead of making payments at food counters/ booths, pay at a centralized payment collection centre, where user shall be provided with a smart card. The smart card shall empower the user to buy food items or avail services of a specified value in the Project Facility. User shall then use the value in smart card to buy items or avail services in one or more food counters/ eateries in the Project Facility. If there is any



unused value left in the smart card, the user shall have the option to go back to centralized payment collection centre and get the balance value reimbursed.

- 6.1.13 All proceeds, collections arising out of any sales and/ or services such as sale of over-the-counter items, including but not limited to food and beverages, to the users of food counters/ booths, shall be deposited in a designated Project specific collection account opened by the Operator (during Conditions Precedent period) in a Scheduled/ Nationalized Bank in Shimla. All payments to vendors/ sub-licensees of the food counters/ booths/ eateries at the Food Court shall be paid their share of revenue generated from their respective sales of F&B, from this centralized and designated collection account of the Project Facility.

6.2 Access for Supervision

- 6.2.1 The Operator shall, at all reasonable times and on reasonable prior notice, afford access to the Project Facility following grant of possession thereof to the representative(s) of the Competent Authority/ies concerned with the safety, security or environmental protection to inspect the same. The Nodal Officer's access to the Project Facility shall be limited only to inspect and satisfy himself that no damage has been/ is being caused to the original internal works and the existing structure of the Project Site on account of the activities of the Operator. The Operator undertakes to extend full cooperation to such persons and the Nodal Officer visiting the Site.

6.3 Obligations relating to Environmental Measures

- 6.3.1 The Operator 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.
- 6.3.2 The Operator shall keep the Project Site free of debris, trash and hazardous conditions, shall keep public areas around the Project Facility free of hazardous conditions originating from Operator's operations, if any, and shall notify the Authority promptly of any other hazardous conditions in the public area outside the Project Site.
- 6.3.3 The Operator shall dispose off the waste/ garbage/ litter as per Applicable Laws and ensure that the customers/ visitors do not litter in and around the Project Facility. In this regard, the Operator shall provide proper arrangement for the adequate sanitary disposal of all trash and other refuse on the Project Site and shall provide for its timely removal. The Operator shall take appropriate measures in the handling of waste materials to prevent the presence of rodents and other vermin. Operator shall keep all garbage materials in durable, fly-proof and rodent-proof, fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors, or covers, and shall be kept tightly covered when material is not being deposited in them. The Operator shall clean the containers, as necessary, to prevent foul smell.
- 6.3.4 The Operator shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, including its officers, employees and agents from and against

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any and all demands, claims, damages, penalties, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Operator to discharge its obligations under this Article inter alias, and to comply with the provisions of safe food, health, safety and environmental laws as applicable;

6.4 Safety and Security

- 6.4.1 The Operator shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and all safety regulations applicable, access arrangements and operations of the Project Facility conforming to Good Industry Practices. The Operator shall be responsible to take all precautions to ensure the safety of its staff, customers/visitors or users and the public.
- 6.4.2 The Operator shall be responsible at its cost, safety and security of all the Project Assets, both movable and immovable at the Project Facility by deploying adequate security staff round the clock, CCTV cameras at appropriate locations at the Project Facility. Unless otherwise stated in this Agreement:
- i. The Operator shall be responsible for keeping unauthorized persons off the Project Facility and preventing encroachment on the Project Site during the Concession Period.
 - ii. Authorized Persons shall be limited to the staff of the Operator and the Nodal Officer.
- 6.4.3 In the event of an accident, the Operator shall, by most expeditious means, inform the concerned civil and police authorities, and also the Authority. The Operator's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Facility of such accident intact, until completion of all legal formalities. If any portion of the Project Facility suffers any damage, the Operator shall, with the consent of the Authority, arrange for the repair and rectification thereof.
- 6.4.4 The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practice).
- 6.4.5 Any communication to the media made by the Operator shall provide only such enough information as to satisfy the public concern and the Operator shall make no admission nor accept any liability in such communications, without consulting the Authority.
- 6.4.6 The Operator shall indemnify, defend and hold harmless the Authority, during the term of this Agreement, from and against all liabilities, costs, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Operator due to such any accidents.



6.5 Insurance Requirement

- 6.5.1 The Operator shall effect and maintain at its own cost, during the Upgradation Period and the O&M Period, such insurances for such maximum sums as may be required under the Financing Agreements, Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “**Insurance Cover**”). The Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Operator during the Concession Period. The Operator shall procure that in each insurance policy, the Authority shall be a co-insured.
- 6.5.2 Without prejudice to the provisions contained in Sub-Clause 6.5.1, the Operator shall, during the Concession Period, purchase and maintain Insurance Cover including but not limited to the coverage of following:
- a) Loss, damage or destruction of the Project Facility and Project Assets including assets handed over by the Authority to the Operator on account of fire, theft, Acts of God, etc. at the replacement value. This insurance shall be obtained by the Operator in the name/ favour of the Authority
 - b) Comprehensive third party liability insurance including injury or death to the persons who may enter the Project Facility by accident or otherwise;
 - c) Workmen’s compensation insurance, ESI, medi-claim, personal accident insurance, etc.;
 - d) The Operator’s general liability arising out of the Concession; and
 - e) Any other insurance that may be necessary to protect the Operator, its staff and its assets and the Authority, its employees and agents engaged in or connected to the Project and the Project Facility including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).
- 6.5.3 The Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.
- 6.5.4 All insurances obtained by the Operator in accordance with this Clause 6.5 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Operator shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium 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 non-renewal has been delivered by the Operator to the Authority.
- 6.5.5 All insurance policies in respect of the insurance obtained by the Operator pursuant to



this Clause 6.5 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

- 6.5.6 The Operator hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Operator may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Operator pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.
- 6.5.7 The proceeds from all insurance claims in respect of coverage at Sub-Clause 6.5.2 (a) shall be paid to the Authority which shall be then utilized towards any necessary repair, re-construction, reinstatement, replacement, improvement, etc. of the Project Facility, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.
- 6.5.8 The Operator expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Operator's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

6.6 Redressal of Public Grievances

- 6.6.1 The Operator shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**") in a dedicated corner at the Project Facility. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Operator at Project Site so as to bring it to the attention of all the visitors/ customers.
- 6.6.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Operator.
- 6.6.3 The Operator shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Operator to the Complainant via Email or SMS.
- 6.6.4 The Operator shall provide copy of the Complaint Register to the Authority on quarterly basis every year.



6.7 Electricity and Water

- 6.7.1 The Operator shall be required to obtain electricity and water connections at its cost. Further, the Operator shall be liable to pay to the concerned department the cost or charges for the units of power and water consumed at the Project Facility.
- 6.7.2 The Operator shall ensure timely payment of bills related to electricity, water, and other utilities. In the event of default committed by the Operator in making payment of any such bills and as a result some penalty or penal interest is levied or charged by the concerned authority/ department, the Operator shall be liable to bear the same without any responsibility of the Authority.
- 6.7.3 The Operator shall also make adequate arrangement for power backup at its cost and expense.

6.8 Change in Ownership

- 6.8.1 The aggregate shareholding of the Joint Venture Members in the subscribed and paid up equity share capital of the Operator (in case the Operator is a company) shall be not less than:
- i. 100% (one hundred percent) until the 5th (fifth) anniversary of the Commercial Operations Date of the Project (the “**Lock-in Period**”), with the Lead Member holding at least 51% and the other Member holding at least 26% during this period.
 - ii. thereafter 51% (fifty one percent) for the balance Concession Period, with the Lead Member holding at least 26% out of the 51% share.
- 6.8.2 In case of the Operator being a single entity Selected Bidder and wants to implement the Project through a Special Purpose Vehicle, then such Bidder shall maintain at least 76% (seventy six percent) equity in the Project till the 5th anniversary of the Commercial Operations Date and thereafter 51% (fifty one percent) for the balance Concession Period.
- 6.8.3 At no stage during the Lock in Period shall any change in the shareholding pattern of the SPV be made by the Consortium Members and/or Selected Bidder without obtaining prior approval from the Authority. On an application made for the purpose, the Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority.
- 6.8.4 In case any such change in composition of the Joint Venture/ Operator has been agreed upon, the parties would be required to submit a revised Memorandum of Understanding to the Authority.

7. Obligations of the Authority

7.1 General Obligations



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



- (i) appoint any other competent person/ firm as expert, to investigate any defects or deficiency in the Project Facility and to assist the Nodal Officer in monitoring the operations, management and maintenance of the Project by the Operator; and
- (j) support, cooperate, facilitate and guide the Operator in the implementation of the Project in accordance with its objective.

8. Representations and Warranties

8.1 Representations and Warranties of the Operator

The Operator represents and warrants to the Authority that:

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



the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k) no order has been made and no resolution has been passed for the winding up of the Operator or for a provisional liquidator to be appointed in respect of the Operator and no petition has been presented and no meeting has been convened for the purpose of winding up the Operator. No receiver has been appointed in respect of the Operator or all or any of its assets. The Operator is not insolvent or unable to pay its debts as they fall due.
- l) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- m) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- n) all rights and interests in the immovable assets incorporated in the Project along with all fittings & fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site, shall pass to and vest in the Authority on the Handback Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Authority; and
- o) it shall not novate or assign the Agreement and all or any rights and obligations arising therefrom to any party without any written approval from the Authority.

8.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Operator that:

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



Agreement, exercise its rights and perform its obligations, under this Agreement;

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

8.3 Disclosure

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

9. Performance Security Bank Guarantee

9.1 Performance Security

- 9.1.1 The Operator has submitted to the Authority, for the due and punctual performance of its obligations hereunder during the Concession Period, to the Authority, within 21 (twenty-one) days of the date of LOA, a Performance Security of **Rs.50,00,000/- (Rupees Fifty Lakhs Only)**, in the form of an unconditional and irrevocable Bank Guarantee in favor of **"The Commissioner, Municipal Corporation, Shimla"** payable at Shimla, Himachal Pradesh as per the format given in **Schedule-C** of this

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Agreement.

- 9.1.2 Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.
- 9.1.3 The Performance Security shall be kept valid and in force for the entire duration of the Agreement Period plus 90 (ninety) days, through periodical renewals, prior to the expiry of the subsisting Performance Security. In the event the Operator fails to provide the renewed/ extended performance security prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Operator to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute an Operator Event of Default in terms hereof. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne by and paid by the Operator.

9.2 Appropriation of Performance Security

- 9.2.1 In the event, the Operator is in default or breach of the due, faithful and punctual performance of its obligations or failure to meet Conditions Precedent under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or otherwise against the Operator under this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of obligations/ services within the time period specified herein, or in respect of any dues, demands, damages or claims against the Operator.
- 9.2.2 The decision of the Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator and the Operator specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Concession Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.
- 9.2.3 In the event of encashment of the Performance Security by the Authority, in full or part, the Operator shall within 15 (fifteen) days of receipt of the encashment notice from the Authority provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Operator's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Operator, which shall entitle the Authority to terminate this Concession Agreement in accordance with the provisions hereof.



9.3 Release of Performance Security

The Performance Security Bank Guarantee (if subsisting) shall be released to the Operator 90 (ninety) days after the Handback Date. The Nodal Officer of the Authority during the above-mentioned 90 (ninety) days period shall inspect the Project Facility to determine whether any damage, defects or shortcomings is present at the Project Facility. The Operator shall at its cost remove and rectify any defects or shortcomings pointed out by the Authority/ Nodal Officer by way of written notice or in any report pursuant to the inspection of the Project Facility. Provided however, the Authority shall be entitled to recover the cost of rectification of the defects or shortcomings, in case the Operator fails to undertake the same, along with any amounts due or receivable from the Operator under this Concession Agreement, before the Performance Security is duly discharged and released to the Operator.

10. Rights and Title over the Project Facility

10.1 Transfer of Project Site on License

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

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

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

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

10.2.1 The Operator, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site and the Project Facility during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. The Operator shall

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not use the Project Site or Project Facility for any other purpose not intended herein.

10.2.2 The Operator shall confine its operations to the Project Site and the Project Facility. The Operator shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighboring areas or otherwise cause any interference with/ to the employees, representatives and agents of the Authority. The Operator shall take utmost care in ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to owners and occupiers of other buildings/ shops, etc. in the neighborhood or obstructs the passage of free movement on the Circular Road in any manner. Also any construction material brought to Project Site should be properly stacked, stored and covered by proper sheets to prevent air pollution and marring of the beauty of the Project Site in particular and the area in general.

10.2.3 The Operator is required to introduce and adopt at all times, appropriate measures for safety, security and orderliness on the Project Site granted to the Operator.

11. Operations and Maintenance (O&M)

11.1 Commencement and duration

The O&M of the Project shall commence from the Commercial Operations Date and terminate on the Handback Date (the “O&M Period”).

11.2 Obligations of the Operator during O&M Period

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

- i. carrying out all the maintenance (periodic preventive or routine maintenance) works and repairs of all Project Assets, facilities, utilities, etc. at the Project Facility and common areas in accordance with the provisions of this Agreement;
- ii. carrying out any alterations (subject to prior written approval of the Authority in the event of structural alterations), repairs, replacements or modifications during the O&M Period to maintain the Project Facility in good running conditions at all times to maintain high quality and good standards of various facilities at the Project Facility. If any part of the Project Facility is required to be temporarily closed for the same, the Operator shall inform the Authority in advance (in writing);
- iii. responsible for compliance with all applicable labour laws and other relevant Central/ State Government Rules etc. (*as amended from time to time during the Concession Period*);



- iv. deploying professionally trained staff in adequate number to manage complete operations of the Project Facility and its upkeep, security, etc. in terms of this Agreement and Good Industry Practice;
- v. be entitled to demand, collect, retain and appropriate the sale proceeds (as per the revenue arrangements with the licensees of the Food Court) from the sale of goods and services to the public/ customers or visitors at the Project Facility in accordance with the provisions of this Agreement;
- vi. ensure that good service standards and good hospitality industry practices are adopted and followed in the said Project Facility throughout the Concession Period;
- vii. ensuring safe and secure atmosphere at the Project Facility;
- viii. preventing with the assistance of the Authority and the concerned law enforcement agencies, any encroachments on, or unauthorized entry into the Project Facility;
- ix. ensure provisioning of continued supply of electricity, water, communication lines, good sanitation conditions, garbage disposal system and other utilities as per applicable regulations, and pay applicable utility expenses, charges/ rates, including penalties for default in payment, in relation to the use thereof, at the Project Facility. The Operator shall indemnify/ keep indemnified the Authority in this respect;
- x. maintaining the requisite insurances as required under this Agreement;
- xi. operating and maintaining adequate fire safety arrangements;
- xii. maintaining high standards of cleanliness and hygiene at the Project Facility and the Project Site with adequate availability of water always; and
- xiii. installing and operating a management software for easy and effective day to day operations and management of the billing and inventory of the Project Facility.

11.2.2 The Operator recognizes and acknowledges the fact that the Project is intended to provide a public facility and the Operator shall have no right to prevent, impede or obstruct any bona fide customers/ visitors from using the Project Facility, save for regulating such usage under the policy of the Operator, terms of this Agreement and in the public interest.

11.2.3 Notwithstanding anything contained herein, the Operator shall be solely responsible for all the claims or proceedings filed with respect to the O&M of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Operator shall always keep the Authority indemnified in this regard.

11.2.4 The Operator shall at its cost remove and rectify any defects or shortcomings

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pointed out by the Authority/ Nodal Officer by way of written notice or in any report pursuant to any inspection of the Project Facility.

11.3 Inspection, Reporting, Fine, Remedial Measures and Damages

- 11.3.1 The Nodal Officer shall inspect the Project Facility at least once in 6 (six) months during the O&M Period to assess the safety aspects at the Project Facility and to assess whether due to the activities of the Operator, any visible damage is being caused or is threatened to be caused to the internal/ external structures, roof, fittings & fixtures of the Project Facility. The Project Manager/ Operator shall extend full co-operation to the Nodal Officer in performing its functions. The Nodal Officer shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail any remedial measures required to be taken by the Operator to prevent any visible/ obvious or threatened damage to the Project Facility including fittings & fixtures belonging to the Authority thereat, internal or external structure of the Project Site due to the activities of the Operator, and send a copy thereof to the Authority and the Operator within 7 (seven) days of such inspection.
- 11.3.2 The Operator shall take appropriate remedial measures required to be taken in view of the observations, if any, set out in the O&M Inspection Report and furnish a compliance report in respect thereof to the Nodal Officer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; in case such remedial measures are likely to take more than 15 (fifteen) days, the Operator shall submit progress update (via email) of the repair works once every week until such works are completed in conformity with this Agreement. Provided however, where the Authority at its sole discretion determines that the remedial measures in relation to any damage to internal/ external structure(s) caused should be undertaken by the Authority itself through its contractor, then such remedial measures shall be carried out by the Authority at the cost and expense of the Operator. The Operator shall accept such determination and not object to the same.
- 11.3.3 In the event the remedial measures are not initiated/ completed by the Operator as directed by the Authority to keep the Project Site including the Project Facility safe, secure and in good condition, the Authority shall be entitled to recover Damages from the Operator, which shall not exceed 0.2% (zero point two percent) of Performance Security for each day until rectification to the satisfaction of the Nodal Officer.
- 11.3.4 The Authority can also impose a fine of upto Rs.5,000/- (Rupees Five Thousand Only) on the Operator for any infraction/ violation observed during any inspection, including but not limited to instances where any of the Operator’s staff or that of its sub-licensees or vendors are found to be in an inebriated condition/ indulging in bad conduct or misbehaviour/ creating nuisance/ improper maintenance & defacement of the Project Facility/ lack of hygiene or cleanliness/ willfully damaging or tampering with the Project Site including the Project Facility and Project Assets/ property of the Authority.
- 11.3.5 The Operator shall also provide the Authority with such reports which are required to comply with the instructions of any Competent Authority or the standing procedures for any clearance, etc. The Operator shall also submit to the Authority on a regular basis, the following, upon obtaining knowledge thereof:

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- i. Litigation, claims, disputes or actions, threatened or pending concerning the Project;
- ii. Refusal to grant, renew or extend, or any action threatened or pending that might affect any Applicable Permit;
- iii. All penalties or notices of violation issued by any Competent Authority;
- iv. Information concerning new or significant aspects of the Project, including any material complaint about the Facilities from any person;
- v. Any other information considered essential by the Authority.

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

12. Accounts and Audit

12.1 Accounts and Audit

12.1.1 The Operator shall maintain books of accounts recording all its income, expenses, assets and liabilities in relation to the Project and get it audited. Ensure that all the payments are in accordance with the Accounting Standards, Good Industry Practice, Applicable Laws and Applicable Permits.

12.1.2 On or before the 31st (thirty-first) day of May each Year, the Operator shall provide to the Authority, for the preceding Accounting Year, a financial statement duly audited by its Auditors giving summarized information on sale proceeds and other revenues derived from the various components of the Project Facility along with a copy of its Cash Flow Statement, Profit & Loss Account, and any other information as the Authority may reasonably require.

12.2 Appointment of Auditors

12.2.1 The Operator shall appoint, and have during the subsistence of this Agreement a qualified Chartered Accountant as its Statutory Auditor (SA). All the fees and expenses of the Auditor shall be borne by the Operator.

12.3 Certification of claims by Auditors

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

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

13. Nodal Officer

13.1 Nomination

13.1.1 The Authority shall appoint the Nodal Officer within 7 (seven) days of

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Agreement Date. The Nodal Officer shall act as the representative of the Authority in respect of the Project.

13.1.2 The Authority may replace/ change the Nodal Officer at any time and inform the Operator the particulars of the new officer appointed in place of earlier Nodal Officer.

13.2 Tenure

13.2.1 The tenure of Nodal Officer shall commence from the date of nomination thereof and shall continue until the end of the Concession Period.

13.3 Roles and Responsibilities

13.3.1 The Nodal Officer will ensure smooth implementation of the Project by undertaking, inter alia, the following roles and responsibilities:

- (i) to ensure compliance of the Upgradation Works by the Operator in accordance with the Layout Plan approved by the Authority;
- (ii) to ensure that the Operator is adhering to the provisions of this Agreement, directions and instructions of the Authority (if any issued) from time to time;
- (iii) to carry out regular inspection of the Project Facility to determine that no damage is caused to the original interior works, internal or external structures of the Project Facility due to the activities of the Operator at the Project Facility;
- (iv) to review the safety and security of the operations, management and maintenance activities relating to the Project;
- (v) to check the Project Facility to ensure that the Operator or its sub-licensees / vendors at the Food Court do not stock, store, exhibit or sell any items which are repugnant to the public order, morality or decency;
- (vi) to check that the Project Facility is not being used or occupied by the Operator or its staff or agents, as a place for lodging, storing, dwelling or sleeping, auction, gambling or any unlawful purpose or any other purpose not in consonance with the provisions of the Concession Agreement;
- (vii) to report to the Authority any infractions/ violations/ defaults/ defects in operation and maintenance requirements, grievances received against the Operator and thereafter ensure that the Operator complies with the remedial measures suggested by the Authority; or
- (viii) any other duty which is considered in the overall interest of the Project as per the directions of the Authority.

13.3.2 Nodal Officer shall visit the Project Facility at least once in 15 (fifteen) days or earlier as may be required during the Upgradation Period, to inspect the Project Facility along with the Project Manager of the Operator, to ensure compliance of the works in accordance with the approved Layout Plan. The Nodal Officer shall prepare a report of such inspection (the “**Inspection Report**”) stating therein reasonable detail any



remedial measures required to be taken by the Operator to prevent any obvious or threatened damage to the internal or external structure of the Project Site and the Project Facility due to the activities of the Operator. The Nodal Officer shall submit the Inspection Report to the Authority with a copy marked to the Operator within 5 (five) days of such inspection. The Nodal Officer shall ensure that the Operator upon receipt thereof shall forthwith take remedial measures, if any, stated in the Inspection Report within a period not exceeding 15 (fifteen) days and in case such remedial measures are likely to take more than 15 (fifteen) days, the Operator shall submit progress update (via email) of the repair works once every week until such works are completed in conformity with this Agreement. Provided however, where the Authority at its sole discretion determines that the remedial measures in relation to any damage to structure caused should be undertaken by the Authority itself through its contractor, then such remedial measures shall be carried out at the cost and expense of the Operator. The Operator shall accept such determination and not object to the same.

13.3.3 The Nodal Officer shall inspect the Project Facility at least once in 6 (six) months during the O&M Period or at such shorter intervals as deemed appropriate in accordance with the manner specified in Clause 11.3. The Project Manager/ the Operator shall extend full co-operation to the Nodal Officer in performing its functions.

13.3.4 Any failure on the part of the Nodal Officer in respect of its functioning shall not (i) amount to any consent or approval or waiver of the activities of the Operator; and (ii) release or discharge the Operator of its obligation in part or full, to carry out the operations, management and maintenance of the Project Facility in orderly manner.

14. Force Majeure

14.1 Meaning of Force Majeure

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

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

14.2 Force Majeure Events

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

- (a) Act of God, epidemic, pandemic, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation,



fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facility);

- (b) any civil commotion, boycott or political agitation, lockdowns, curfew, embargo, blockade in Shimla/adjoining supply areas interrupting business operations & services at the Project Facility for an aggregate period exceeding 14 (fourteen) days in an Accounting Year;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Laws or Applicable Permits, or (ii) on account of breach of any Applicable Laws or Applicable Permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (d) The discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- (e) 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;
- (f) Industry-wide or State-wide strikes or industrial action for a continuous period of 48 (forty-eight) hours and exceeding an aggregate period of 14 (fourteen) days in an Accounting Year;
- (g) compulsory acquisition in national interest or expropriation of any Project Facility or any part of the Project Site or rights of the Operator or of the contractors;
- (h) 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 Operator; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit.

14.3 Duty to Report Force Majeure Event

Upon occurrence of a Force Majeure Event, the Affected Party shall by notice within 15 (fifteen) days of the occurrence of the Force Majeure Event report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;



- (b) the estimated duration and the effect or probable effect, which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 15 (fifteen) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

14.4 Effect of Force Majeure Event

14.4.1 Upon the occurrence of any Force Majeure Event:

- (i) before COD, the time for completion of Upgradation Works shall be extended by a period equal in length to the duration of the Force Majeure Event; or
- (ii) after COD, whereupon the Project Facility is unable to keep the Project Facility open for business or it is directed by the Authority to close the Project Facility during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal to the period during which the Project Facility was closed for business on account thereof.

14.5 Allocation of Costs arising out of Force Majeure

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

Provided however, if as a result of a Force Majeure Event, during the O&M Period, the Operator is unable to collect the Project Revenues or there is at least [30%] reduction in Project Revenues in comparison to the Project Revenues being earned by the Operator in the preceding six months (prior to the occurrence of the Force Majeure Event and duly certified by the Statutory Auditor/ Chartered Accountant of the Operator) despite making best efforts, the Authority upon written representation in this regard from the Operator along with all supporting documents including certificate to this effect by the Statutory Auditor/ Chartered Accountant, may at its sole discretion without any binding obligation, consider granting some relaxation in the payment of the Annual Concession Fee for the affected period on a pro-rata basis keeping in view the gravity of the circumstances or may consider deferring the



payment of the Annual Concession Fee for the affected period for the duration as considered reasonable by the Authority under the facts and circumstances of the situation.

14.6 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a continuous period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 14 and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

14.7 Consequences upon Termination for Force Majeure Event

In the event of Termination on account of Force Majeure Event, the Project Site along with all immovable assets whether belonging to the Authority and/ or the Operator shall revert to the Authority, without any obligation of the Authority to pay or adjust any consideration or other payment to the Operator. Provided however, the Operator shall be entitled to take away its movable assets only that are brought and incorporated into the Project Facility by it at its cost, without damaging the Project Site or the Project Facility or any part thereof. Provided however, any fittings & fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site including the Project Facility which if tried to be removed or dislocated, can cause damage to any structure present at the Project Facility or the Project Site cannot be removed by the Operator and shall be mandatorily handed over to the Authority free of cost. The Performance Security shall be released to the Operator by the Authority.

14.8 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 18 provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

15. Termination

15.1 Termination for Operator's Default



Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days from the date of notice of default (the “**Default Notice**”) from the Authority, the Operator shall be deemed to be in default of this Agreement (the “**Operator’s Event of Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure.

- (a) The Performance Security has been partially or fully invoked and appropriated by the Authority as per this Agreement and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) The Operator does not make payment to the Authority and remains in default for a period of more than 15 (fifteen) days from the due date of payment. However, in case of payment of Annual Concession Fee and escalation thereon, any default by the Operator in payment of the same along with applicable taxes beyond 4 (four) weeks from ACF Due Date shall tantamount to Operator's Event of Default;
- (c) Change in Ownership has occurred in breach of the provisions of this Agreement;
- (d) The Operator defaults on any of its obligations pertaining to compliance with the Applicable Laws and Applicable Permits and continues to be in default;
- (e) The Operator fails to make payment of the Annual Concession Fee and escalation thereon along with applicable taxes, to the Authority by the ACF Due Date;
- (f) COD does not occur within the period specified in Sub-Clause 3.5.2;
- (g) The Operator creates any Encumbrances, charges or lien in respect of the Project Facility, Project Site or any part thereof in favor of any Person including the Lenders, save and except as otherwise expressly permitted in this Agreement;
- (h) The Operator allows or undertakes any activities, which is likely to cause damage to the Project Facility or is found to be against the public order, morality or decency;
- (i) The Operator allows usage or occupying of the Project Site as a place for lodging, storing, dwelling or sleeping, auction, gambling or any unlawful purpose or any other purpose not in consonance with the provisions of this Concession Agreement;
- (j) The Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (k) The Operator commits a material default in complying with any other provision of this Agreement, directions of the Authority/ Competent Authority



and continues to remain in default;

- (l) The Operator novates and/or assigns the Agreement to any third party without any prior approval for the same from the Authority;
- (m) The Operator indulges in any sort of construction activity or structural alterations other than as permitted under the approved Layout Plan or undertakes any repairs of or makes any changes to the internal or external structures of the Project Site without prior written approval of the Authority;
- (n) The Operator abandons or manifests intention to abandon the Project without prior written consent of the Authority or the Operator has caused grave damage to the original interior works of the Project Site;
- (o) The Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement or repudiation thereof;
- (p) Change in the management and/ or control of the Operator entity, which according to the Authority has a Material Adverse Effect on the Project;
- (q) The Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (r) A resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by the NCLT or court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by Court;
- (s) The Operator commits a default under the Financing Agreements;
- (t) The Operator has failed to fulfill any obligation, for which failure, Termination has been specified in this Agreement.

15.2 Procedure to issue Termination Notice

Upon occurrence of an Operator's Event of Default, which remains uncured even after issuance of Default Notice to the Operator by the Authority, shall entitle the Authority to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 15 (fifteen) days' time to the Operator to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

15.3 Termination for Authority's Event of Default

15.3.1 In the event that any of the defaults specified below shall have occurred, and the



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

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

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

15.4 Consequences of Termination

15.4.1 Upon Termination of this Agreement either by the Authority on account of an Operator’s Event of Default or by the Operator on account of Authority’s Event of Default under this Article 15, the Project Site along with all immovable assets whether belonging to the Authority and/ or the Operator shall revert to the Authority, without any obligation of the Authority to pay or adjust any consideration or other payment to the Operator. Provided however, the Operator shall be entitled to take away its movable assets only that are brought and incorporated into the Project Facility by it at its cost, without damaging the Project Site or any part thereof. Provided however, any fittings & fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site which if tried to be removed or dislocated, can cause damage to any structure present at the Project Site cannot be removed by the Operator and shall be mandatorily handed over to the Authority free of cost upon the Handback Date.

15.5.1 In case of Termination of this Agreement on account of an Operator’s Event of Default, the Performance Security of the Operator shall be retained and forfeited by the Authority. However, in case of Termination of this Agreement on account of Authority’s Event of Default, the Performance Security of the Operator shall be released by the Authority to the Operator in accordance with Clause 9.3 of this Agreement.

15.4.3 In case the Operator while removing and taking away any of its movable asset upon Termination of this Agreement either due to default or otherwise due to efflux of time causes any damage to the Project Site or any part thereof including the structures, the same shall be cured and rectified by the Operator at its cost and expense to the satisfaction of the Authority.

Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode



15.5 Other Rights of the Authority and Obligations of the Operator

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

- (a) Be deemed to have taken possession and control of the Project Assets and the Project Site forthwith subject to the right of the Operator to take away any moveable assets brought by it to the Project Facility at its cost, without causing any physical damage to the Project Site or any part thereof including the structures;
- (b) require the Operator to comply with the Divestment Requirements set forth in Article 16;
- (c) succeed upon election by the Authority expressly in writing (*at its sole discretion*), without the necessity of any further action by the Operator, to the interests of the Operator under such of the Third Party Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to such third party only for compensation accruing and becoming due and payable to them under the terms of their respective Third Party Agreements from and after the date the Authority elects to succeed to the interests of the Operator. For the avoidance of doubt, the Operator acknowledges and agrees that all sums claimed by such third parties as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Operator and such third parties, and the Authority shall not in any manner be liable for such sums.

15.6 Survival of Rights

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

15.7 Liability for defects after Termination

The Operator shall be responsible to repair and rectify all defects and deficiencies in the Project Facility for a period of 90 (ninety) days after Termination, at its own cost. In the event that the Operator fails to repair or rectify such defect or deficiency within such period as specified by the Authority or within a period of 21 (twenty-one) days from the date of notice issued by the Authority in this behalf, whichever is later, the Authority shall be entitled to get the same repaired or rectified at the Operator's risk and cost. Also, any damage to the internal and external structures of the Project Facility shall be at the risk and cost of the Operator. Any repair work which the Authority carries out (in case of failure of Operator to do so) under this Clause for repairing any damage to any internal and external structures, all costs incurred by the Authority hereunder shall be reimbursed by the Operator to the Authority within 15 (fifteen) days of receipt of demand thereof, and



in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security of the Operator and the balance if any left shall be paid by the Operator to the Authority.

16. Divestment of Rights and Interest

16.1 Divestment Requirements

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

- a) inform to the Authority forthwith the location and particulars of all Project Assets including the moveable assets brought by the Operator to the Project Site for operation of the Project Facility that the Operator intends to remove (without damaging the Project Site or any part thereof including structures) and take away;
- b) deliver/surrender/ transfer and assign forthwith the actual possession of the Project Site along with all the immovable assets incorporated into the Project to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens, assignment and Encumbrances created or suffered by the Operator after the Agreement Date. However, the Operator shall be entitled to take away all the moveable assets brought by it without damaging the Project Site or any part thereof including structures;
- c) cure the Project Site and all the immovable assets of any damage;
- d) ensure that personnel of the Operator deployed on the Project Facility shall continue to be the responsibility of the Operator or its sub-licensees/ vendors and the transfer of the Project Site shall not in any manner affect their status as personnel of the Operator and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency;
- e) to the extent possible assign to the Authority or its nominated agency (only if so, requested by the Authority) at the time of transfer all unexpired guarantees and warranties by vendors in respect of all the immovable assets, fittings & fixtures embedded/ fixed/ attached to any part of the structures of the Project Site (whether belonging to the Authority or the Operator) and any moveable assets left behind by the Operator. The Operator shall ensure that any rights, which are to be so assigned, are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterpart to the Operator;
- f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project Site, including manufacturers' warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee;
- g) at the time of transfer of the Project Site along with all immovable assets fittings & fixtures embedded/ fixed/ attached to any part of the structures of the Project Site (whether belonging to the Authority or the Operator) shall be in



good condition as is reasonable in all the circumstances, taking into account their age, the design, materials used, and maintenance carried out;

- h) until the Handback Date and completion of all Divestment Requirements herein, all risks shall lie with the Operator for loss of or damage to the whole or any part of the Project Facility, unless the loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement. The Operator, if required, shall provide fair and just compensation to staff deployed at the Food Court, if required under the Applicable Laws, and shall indemnify the Authority against any and all claims such staff member(s) may make for loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Operator's or its sub-licensee or vendor's staff and labour;
- i) the Operator shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the transfer of the Project Facility to Authority by the Operator;
- j) on the Handback Date, the Declaration of License shall automatically terminate and the Operator, its subcontractors, agents, staff, sub-licensees, vendors, etc. shall vacate the Project Site and handover peaceful possession of the Project Site along with all immovable assets, fittings & fixtures embedded/ fixed/ attached to any part of the structures of the Project Site (whether belonging to the Authority or the Operator);
- k) from the Handback Date, the obligations and the rights of the Operator under this Agreement shall terminate and shall no longer act in its capacity as Operator in relation or pursuant to this Agreement; and
- l) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

16.2 Inspection and Cure

Not earlier than 90 (ninety) days prior to Termination due to efflux of time but not later than 30 (thirty) days prior to the effective date of such Termination, the Authority/ Nodal Officer along with the Operator's representative shall jointly verify, after giving due notice to the Operator, specifying the time, date and venue of such verification and/or inspection. Defaults, if any, shall be cured by the Operator at its own cost and the provisions of Clause 15.7 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 16.

16.3 Divestment costs etc.



16.3.1 The Operator shall bear and pay all costs incidental to meeting the Divestment Requirements set forth in this Article 16 in favour of the Authority upon Termination including all stamp duties payable on any deeds or documents executed by the Operator in connection with such divestment.

16.4 Cooperation and assistance on transfer of Project

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

16.4.2 The Parties shall provide to each other, 9 (nine) months prior to the Handback 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 completion of all Divestment Requirements. The Operator shall further provide such reasonable advice and assistance as the Authority, its subsequent operator or agent may reasonably require in relation to the Project Site until the expiry of 6 (six) months after the Handback Date.

16.5 Vesting Certificate

The divestment of all rights and interest in the Project Site shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate (the “**Vesting Certificate**”), in the format at **Schedule-D**, which will have the effect of constituting evidence of divestment by the Operator of all of its rights and interest in the Project Facility/ Project Site along with all immovable assets and fittings & fixtures (whether belonging to the Authority or the Operator) which are embedded/ fixed/ attached to any part of the structures of the Project Site, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Facility on the footing that all Divestment Requirements have been complied with by the Operator.

17. Liability and Indemnity

17.1 General indemnity

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



17.2 Liability of the Authority

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

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

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

17.3 Indemnity by the Operator

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

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

17.4 No consequential claims

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



17.5 Survival on Termination

The provisions of this Article 17 shall survive the Termination of the Agreement.

18. Dispute Resolution

18.1 Dispute

18.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 18.2.

18.1.2 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.

18.2 Conciliation

18.2.1 In the event of any Dispute between the Parties, either Party may call upon the **Secretary (Urban Development) Government of Himachal Pradesh** to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Sub-Clause 18.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to the appropriate court of law in Shimla, Himachal Pradesh for adjudication.

19. Assignment and Charges

19.1 Restrictions on assignment and charges

19.1.1 The Operator shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, either in part or full, except with prior consent of the Authority.

19.1.2 The Operator shall not assign in favour of any person any right or benefit that has not been provided to the Operator by the Authority.

19.1.3 The Operator shall neither create, nor permit creation or subsistence of any Encumbrance in the Project Facility. It is further clarified that any assignment or license on the Project Facility, given to the Operator, shall expire upon Termination of this Agreement.

19.1.4 The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project/ Project Site/ Project Assets/ Project Facility or any other movable/ immovable assets on the Project Site and the Project Facility in any manner whatsoever. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement. However, the Operator shall be free to create charge, mortgage or lien only on the moveable assets (which are neither attached or embedded or fixed to any structure of the Project Site) brought by it at its own cost and risk

Selection of Operator for Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode



to the Project Site.

20. Disclaimer

20.1 Disclaimer

- 20.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Bid Documents, Scope of the Project to be executed, the Project Facility, provision for providing quality services, local conditions, possible demand and all information provided by the Authority, or obtained, procured or gathered otherwise and has determined to its satisfaction its accuracy or impact otherwise and the nature and extent of difficulties, risks and hazards, as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 8.2, the Authority makes no representation whatsoever, express or implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 20.1.2 The Operator hereby acknowledges and accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Sub-Clause 20.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under this Agreement.
- 20.1.3 The Operator further acknowledges that it, or any entity claiming under it, shall have no recourse against Authority if it is, at a later date, found that the Project Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harboured by the Operator in relation to any of the foregoing provisions of this Clause. If a deficiency is found, the Operator acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.
- 20.1.4 Subject to the provisions of this Agreement, the Operator shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the financing, operation, maintenance and management of the Project and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Operator shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Authority and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

21. Miscellaneous

21.1 Governing Law and Jurisdiction

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



21.2 Waiver of Immunity

Each Party unconditionally and irrevocably:

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

21.3 Delayed Payments

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

21.4 Waiver

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

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

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



21.5 Liability for Inspection of Documents

Except to the extent expressly provided in this Agreement:

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

21.6 Exclusion of Implied Warranties etc.

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

21.6.2 The Parties agree that there is no express or implied warranty or guarantee given by the Authority to the Operator of any minimum business or minimum sales or revenue generation at the Project Facility and no term of this Agreement shall be interpreted to imply any such warranty or guarantee.

21.7 Survival

21.7.1 Termination shall:

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

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

21.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.



21.9 Severability

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

21.10 No Lease

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

21.11 No partnership

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

21.12 Third Parties

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

21.13 Successors and Assigns

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

21.14 Notices

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending the same by prepaid registered mail addressed to the Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the purposes of this Clause 21.14 and shall be deemed to be effective (in the case of registered mail) 5 (five) calendar days after posting, (in the case of



facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery.

If to the Authority :

Attn. of : Mr./Ms.....

Address : Old Judicial Complex, Near DC Office, The Mall Shimla, Himachal Pradesh - 171001

Tel: No.:

Fax No.:

E-mail :

Attention : The Commissioner (Municipal Corporation, Shimla)

If to the Operator:

Attn. of : Mr./Ms.....

Address :

Telephone :

Fax :

E-mail:

Attention :

21.15 Language

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

21.16 Counterparts

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

21.17 Amendments

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of the Authority

SIGNED, SEALED AND DELIVERED
For and on behalf of the Operator

..... (Signature)
(Name) (Designation)

..... (Signature)
(Name) (Designation)

In the presence of witnesses:

Signature

Signature



Name

Name

Address

Address

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SCHEDULES TO THE AGREEMENT

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INDEX OF SCHEDULES

Schedule-A: - Project Site & Description of the Project Site

Schedule-B: - Declaration of License

Schedule-C: - Format of Performance Security

Schedule-D: - Vesting Certificate

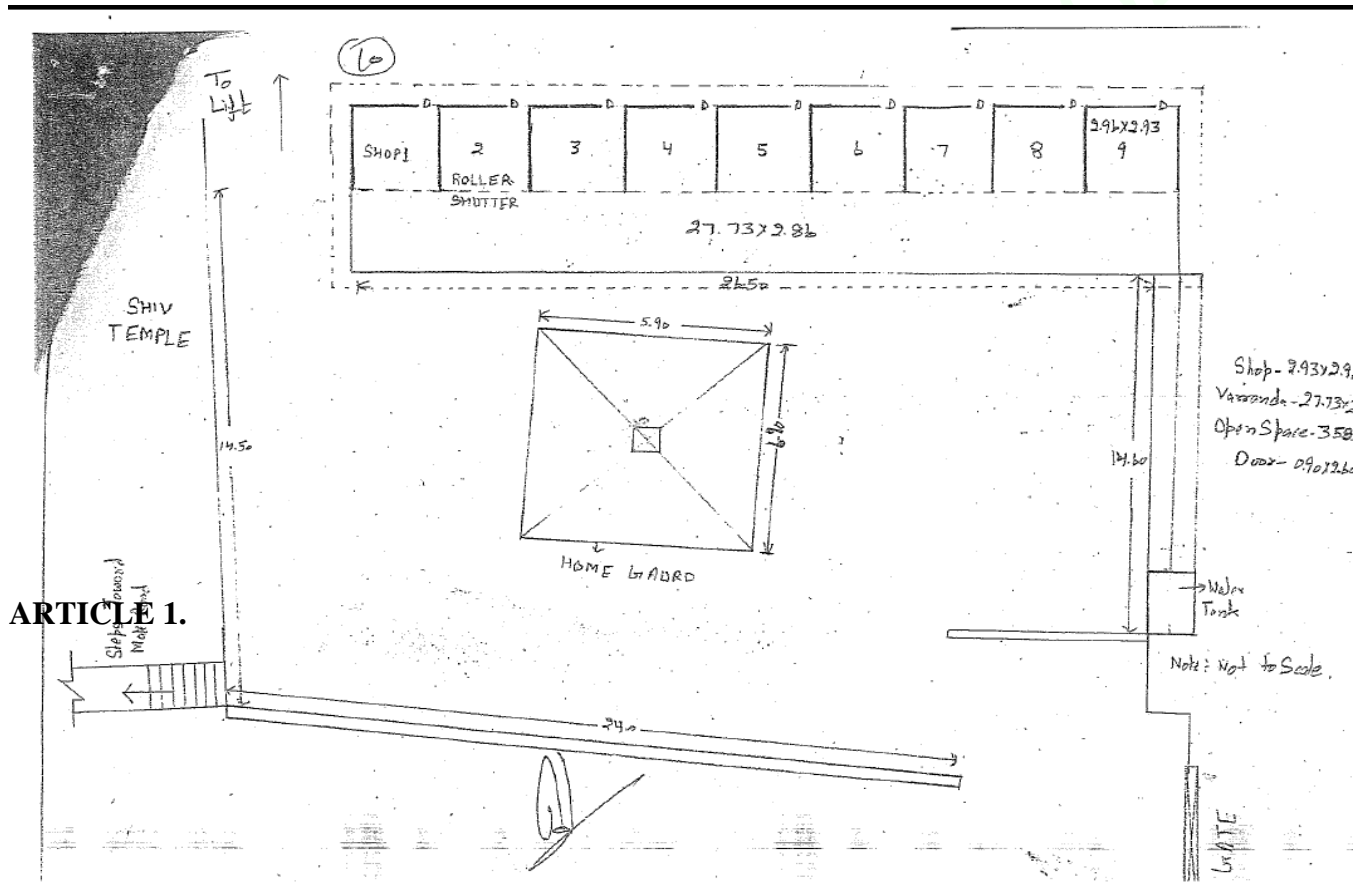
Schedule-E: List of Installed Items in the Project Site (*prepared pursuant to joint inspection*)

Schedule-F: Certificate of Compliance

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Schedule -A: Project Site

The Municipal Corporation Shimla is owner and in possession of 9 (nine) shops in raw condition along with veranda and open space admeasuring 4491 sq. ft. approximately, located near Aajivika Bhawan in front of Vending Complex near lift (to Mall Road) on Circular Road, Shimla, Himachal Pradesh (the “Project Site”).







Schedule-B: Declaration of License

This is to declare that the License rights in terms of the Concession Agreement dated in respect of the Project Facility/ Food Court situated at open area measuring 4,491 sq. ft. located near Aajivika Bhawan in front of vending complex near Lift, Shimla, Himachal Pradesh along with the existing movable and immovable property thereon including all fittings & fixtures thereat, belonging to the Municipal Corporation, Shimla comprising the Project Site, which is described, delineated and shown in Schedule-I of the Concession Agreement dated including the possession thereof are hereby granted by the Municipal Corporation, Shimla (i.e., the “**Authority/ Licensor**”) in favour of M/s..... (i.e., the “**Operator**”) for a period co-terminus with the term of the Concession Agreement, specifically for the purpose of “**Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode**” (the “**Project**”).

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

Dated :

The Commissioner,
Municipal Corporation, Shimla,
Himachal Pradesh



Schedule-C: 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: <.....>

IFS Code: <.....>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the “**Concession**” or “**Agreement**”) to be executed amongst Municipal Corporation, Shimla, Himachal Pradesh through its Commissioner (Hereinafter referred to as the “**Authority**”) and M/s..... (name of the Selected Bidder/ Operator) (hereinafter referred to as the “**Operator**”) for the “Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode” (hereinafter referred to as the “**Project**”), provided, however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall be in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e., “**Performance Security**” shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the unconditional



and irrevocable nature of this Bank Guarantee. The contract of Bank Guarantee is an independent contract between the Bank and the Authority and is not dependent upon the execution or performance of the Agreement amongst the Authority and the Selected Bidder/ Operator.

As per the terms of the Concession Agreement, the Operator is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) as security for due and punctual performance/ discharge of its obligations under the Concession Agreement for the Agreement Period.

Operative part of the Bank Guarantee

1. At the request of the Operator, we (name and address of the bank), hereinafter referred to as the (“**Bank**”), do hereby unconditionally and irrevocably affirm and undertake that we are the guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Bidder, upto a total sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only), such sum being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Operator and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Operator or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs.50,00,0000/- (Rupees Fifty Lakhs only).
3. We hereby waive the necessity of the Authority to demand the said amount from the Operator first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Operator, which are recoverable by the Authority by invocation of this Guarantee.
5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Operator. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs 50,00,000/- (Rupees Fifty Lakhs only) notwithstanding any dispute or disputes



raised by the Operator or anyone else in any suit or proceedings before any conciliator, mediator, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Operator shall have no claim against us for making such payment.

- 7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till
- 8. This Bank Guarantee is issued by the Bank having its office at, but as per the Authority's requirement, this Guarantee can be encashed at the Bank's branch at Shimla, Himachal Pradesh having address at

Notwithstanding anything contained herein:

- 1. Our liability under this Bank Guarantee shall not exceed Rs. 50,00,000/- (Rupees Fifty Lakhs only).
- 2. The unconditional and irrevocable Bank Guarantee shall be valid w.e.f.
- 3. We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a written claim or demand on or before

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)
 (Name)
 (Designation)
 (Code Number)
 (Address)

Notes:

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



Schedule-D: Vesting Certificate

1. The Municipal Corporation, Shimla (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered in to between the Authority and M/s (the “**Operator**”) for “**Upgradation, Operation, Management and Maintenance of Food Court in front of Vending Complex near Lift, Shimla, On PPP Mode**” (the “**Project**”).
2. The Authority hereby acknowledges compliance and fulfillment by the Operator of the Divestment Requirements set forth in Article 16 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired the management control of the Project Facility and all interest of the Operator in or about the Project Site shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be constructed or interpreted as waiving the obligation of the Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Operator in any manner for the same.

Signed this day of 20... at

SIGNED, SEALED AND DELIVERED

For and on behalf of Municipal Corporation, Shimla by:

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



Schedule-E: List of Installed Items in the Project Site
(pursuant to preparation of Joint Inventory - Site)

HPIDB-Website 20-11-2023



Schedule-F: Certificate of Compliance
(See Clause 5.7)

Ref. No.....
.....

Dated

To,

[Name & Address of Operator]

This is to certify that both the Parties i.e. the Municipal Corporation, Shimla and the Operator i.e. M/s have fulfilled their respective Conditions Precedent as laid down in Clause 5.2 and 5.3 respectively of the Concession Agreement dated executed between The Commissioner, Municipal Corporation, Shimla and the Operator.

Hence, the Parties have mutually decided to declare .../.../ 20.... as the Compliance Date for the purpose of commencement of Concession Period, in terms of Clause 5.7 of the Concession Agreement.

[Signed]

[Signed & stamped]

[Name & Designation of the Authority's Officer]
Representative]

[Name & Designation of the Operator's