

# Request for Proposal

For

Selection of an Operator for Operation and  
Management of Tutikandi Parking-cum-Commercial  
Complex at Shimla, Himachal Pradesh on PPP  
Mode

ISSUED BY :

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

**December, 2019**

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**CONTENTS OF RFP DOCUMENTS**

<b>S. No.</b>	<b>Part of RFP</b>	<b>Pages</b>
1	SECTION I (INSTRUCTIONS TO BIDDERS)	
2	SECTION II (DRAFT AGREEMENT)	

**CONTENTS OF THE SECTION I**

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

<b>Invitation for Bids</b>	
Section -1	Introduction
Section -2	Instructions 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. Financial Proposal
  - III. Bank Guarantee for Bid Security
  - IV. Power of Attorney for signing of Bid
  - V. Power of Attorney for Lead Member of Consortium
  - VI. Guidelines of the Department of Disinvestment
  - VII. Joint Bidding Agreement for Consortium
- II.** The Draft Agreement provided in Section - 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**

No. -----

Dated: -----

The Chief General Manager, Himachal Pradesh Infrastructure Development Board, Himachal Pradesh (the "HPIDB") on behalf of the Municipal Corporation, Shimla, invites interested parties with proven experience and credentials in undertaking similar work to participate in the tendering process for the **Selection of an Operator for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh on Public Private Partnership (PPP) basis**. 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 Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh on Public Private Partnership (PPP) basis
2.	Mode of Tendering	Hard copy submission
3.	Cost of Bid Document	<b>Rs.5,000 (Rupees Five Thousand only)</b>
4.	Bid Security Amount	<b>Rs.10,00,000 (Rupees Ten Lakhs only)</b>
5.	Bid Document Advertisement, i.e., Start Date & Time	Start Date: on or before 03.12.2019 from 10.00 a.m. IST on : <a href="https://admis.hp.nic.in/himachal/hpidb">https://admis.hp.nic.in/himachal/hpidb</a> or <a href="http://www.shimlaamc.org">www.shimlaamc.org</a> ; or physically collected from the office of the Chief General Manager, HPIDB, Himachal Pradesh
6.	Last Date for sending Pre-Bid/ RFP Queries	11-12-2019 upto 3.00 p.m. IST on : <a href="mailto:hpidb-hp@nic.in">hpidb-hp@nic.in</a>
7.	Date of Pre-Bid Conference	12.12.2019 at 11:00 A.M. IST, at office of

S. No.	Items	Description
		Commissioner, Municipal Corporation, Shimla.
8.	Date for response to Pre-Bid queries	<i>Shall be notified later</i>
9.	Last date for Bid submission (Bid Due Date)	<i>31-12-2019 till 4.00 p.m. IST</i>
10.	Date & Time for opening of Technical Bid	<i>31-12-2019 at 04.30 p.m. IST in the office of HPIDB, Himachal Pradesh</i>
11.	Date & Time for opening of Financial Bid	To be notified subsequently to technically shortlisted Bidders

1. Bidding Document can be seen on and downloaded from the portal: <https://admis.hp.nic.in/himachal/hpidb> or [www.shimlaamc.org](http://www.shimlaamc.org); or purchased physically from the office of the Chief General Manager, HPIDB, Himachal Pradesh (HP), by the interested parties.
2. Where the Bidding Document is downloaded from the aforesaid portals, then the Bidding Document Fee has to be submitted at the time of submission of Bid through Demand Draft of Rs. 5,000/- (Rupees Five Thousand only) plus GST at the applicable rate in favour of the "**Himachal Pradesh Infrastructure Development Board**" payable at Shimla. If purchased directly from the office of HPIDB, then payment shall be made by way of Demand Draft at the time of purchase and receipt thereof enclosed in the Bid.
3. The Bidding Process can be postponed or cancelled at any time due to administrative reasons and no claim shall be entertained on this account.
4. For further details and tendering schedule, visit the portal <https://admis.hp.nic.in/himachal/hpidb> or [www.shimlaamc.org](http://www.shimlaamc.org).
5. HPIDB shall in no event accept any conditional Bid from the Bidders.

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

## DISCLAIMER

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

This RFP is not an agreement and is neither an offer nor an invitation by the HPIDB and/or Municipal Corporation, Shimla 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**” or “**Proposal**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the HPIDB and the Municipal Corporation, Shimla in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all the persons, and it is not possible for the HPIDB and the Municipal Corporation, Shimla, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

The HPIDB and the Municipal Corporation, Shimla, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness,

completeness or reliability of this RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid stage.

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

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

The issue of this RFP does not imply that the HPIDB is bound to select a Bidder or to appoint the Successful Bidder or 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 Municipal Corporation, Shimla 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 Municipal Corporation, Shimla 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.



**SECTION I – INFORMATION TO BIDDERS**

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## OFFICE OF THE MUNICIPAL CORPORATION, SHIMLA, H.P

### 1 INTRODUCTION

#### 1.1. BACKGROUND

- 1.1.1. The Municipal Corporation, Shimla, represented by its Commissioner (the “**Authority**”) is entrusted with the development related matters of the areas falling within the jurisdiction of the Municipal Corporation and providing basic civic amenities and performing certain obligatory duties entrusted upon them including provision for car parking, etc. As part of this, the Authority intends to “**Select an Operator for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla**” through Public Private Partnership (PPP) basis (the “**Project**”).

Himachal Pradesh Infrastructure Development Board (“**HPIDB**”), 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 for managing the bid process on behalf of the Municipal Corporation, Shimla for “**Selection of Operator for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla**”. Accordingly, HPIDB is inviting Bids through the present Request for Proposal (the “**RFP**”) Document for selection of a private sector entrepreneur as the Bidder to whom the Project may be awarded (the “**Selected Bidder**”) and shall thereafter undertake the Project in accordance with the terms of this RFP including the agreement to be executed with the Authority.

- 1.1.2. HPIDB seek proposals (the “**Bid**”) from eligible entities (the “**Bidder**” which expression shall, unless repugnant to the context, include the Members of the Consortium also) for implementation of the Project. The Selected Bidder, who is either a natural person, private entity, partnership firm, company or society or any combination of them (the “**Operator**”), shall be responsible for operation, maintenance, management and transfer of the Project under and in accordance with the provisions of the operation & maintenance agreement (the “**O&M Agreement**” or “**Agreement**”) to be entered into and executed between the Selected Bidder and the Authority, in the form and manner provided as part of the Bidding Documents, defined herein below, pursuant hereto.
- 1.1.3. The O&M Agreement sets forth the detailed terms and conditions, rights/obligations of the selected Operator and modalities for implementation under the proposed arrangement. Unless the context otherwise requires, the terms not defined in this RFP, but defined in the O&M Agreement for the Project shall have the meaning assigned thereto in the Agreement.

- 1.1.4. The scope of work will broadly include operation, maintenance and management of project facilities already existing/ to be created at the Project site, as specified in detail under Appendix VIII of this RFP document as per the Usage Plan during the tenure of the O&M Agreement and thereafter transfer of the same to the Authority or its nominated agency.
- 1.1.5. The Draft Agreement sets forth the detailed terms and conditions for grant of the concession to the Operator, including the scope of Operator's services and obligations. Subject to Clause 1.1.6 below, the tenure of the Project is 10 (ten) years.
- 1.1.6. **Right of First Refusal:** At the end of the aforesaid tenure of the O&M Agreement by efflux of time, the Authority may either operate the Project itself or may re-bid the same by suitably re-defining or re-structuring the Project parameters as per its sole discretion. In the event of re-bidding, if the selected Operator chooses to participate in the re-bidding process and does not emerge as the successful bidder by being the highest bidder (i.e. H1) or the lowest bidder (i.e. L1) as required, then the selected Operator shall be provided with the right of first refusal to match the bid of the highest bidder (this right to be given only subject to the condition that the Operator is/ was not in default in respect of its obligations under the Agreement and its performance is considered satisfactory by the Authority) and to enter into fresh O&M Agreement upon the terms and conditions frozen as a part of the bid documents to be then issued by the Authority, provided its financial bid is within the range of 10% of the financial bid quoted by the H1 or the L1 bidder, as the case may be. However, the terms and conditions including the financial parameters, if any with regard to the mode, manner etc. of the right of first refusal and the provisions related thereto in the bidding documents shall be determined by the Authority at its sole discretion.
- 1.1.7. The selected Operator, prior to commencing any operations, shall be required to prepare a plan outlining the activities it proposes and how it intends to carry out the operation, maintenance and management of the Project Facility and submit to the Commissioner, Municipal Corporation Shimla for approval. The stipulated usage plan of the Tutikandi Parking cum Commercial Complex which is to be adhered to by the selected Operator always is mentioned in the Agreement. The objective of the selected Operator should be to operate, maintain and manage the Tutikandi Car Parking cum Commercial Complex in a professional and organized manner without comprising on the aesthetics and per floor stipulated usage plan (as mentioned in the Agreement) of the already constructed Facility. Any alteration/ change in usage plan/ major maintenance shall be undertaken by the Operator only with the prior written approval of the Municipal Corporation, Shimla. The Bidders are advised to examine the Agreement in detail to make themselves acquainted with the various provisions therein.

- 1.1.8. 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 Draft 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 Draft 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.
- 1.1.9. This RFP document has been made available on the websites i.e. <https://http://himachalservices.nic.in/hpidb/> and [www.shimlaamc.org](http://www.shimlaamc.org) and can be purchased directly from the office of HPIDB. Bid Document Fee for an amount of Rs.5,000/- (Rupees Five Thousand only) plus GST at the applicable rate, shall be paid. If downloaded from the said websites then the Demand Draft for the said amount towards Bid Document Fee shall be submitted as a part of the Bid and if purchased directly from the office of HPIDB, then the payment shall be made directly to HPIDB through Demand Draft and receipt in respect thereof issued by HPIDB shall be enclosed in the Bid. The said Demand Draft shall be drawn on a Scheduled Bank in India in favour of "**Himachal Pradesh Infrastructure Development Board**" payable at Shimla, Himachal Pradesh, in a manner, prescribed in this RFP document.
- 1.1.10. The Operator shall provide free of cost drop and pick up facility to the Tourists parking their vehicles at the car parking area of the Project Facility and the area of service shall be limited to the nearest motorable point within the municipal limits of the Authority. The Operator at its cost may either procure and deploy its own vehicles or the Operator may tie up with local taxi operators for providing pick-up and drop facility to the Tourists parking their vehicles at the car parking area of the Project Facility, to the nearest motorable point within the municipal limits of the Authority.

## 1.2. BRIEF DESCRIPTION OF BIDDING PROCESS

- 1.2.1 The HPIDB has adopted single stage two-step open competitive tendering process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The Bidding Process shall be carried out in accordance with procedure set out in this RFP. All Bidders shall submit their respective Technical Proposal and Financial Proposal against this RFP in a single stage. The first step of the process involves qualification of interested parties/ Consortia on the basis of the Technical Proposal submitted by the Bidders in accordance with the provisions of this RFP. At the end of the first step, the HPIDB shall shortlist pre-qualified

Bidders. In the second step of the process, Financial Proposal of only these shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Selected Bidder.

Government of India has issued Guidelines (see **Appendix-VI** of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The HPIDB shall be entitled to disqualify a Bidder in accordance with the aforesaid Guidelines at any stage of the Bidding Process. The Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the format attached herewith as **Appendix-I**.

- 1.2.2 The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the date specified in Clause 1.3 for submission of bids (the “**Bid Due Date**”).
- 1.2.3 The Bidding Documents include the Draft O&M Agreement and its Schedules for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, or modified RFP documents but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security for an amount of **Rs.10,00,000/- (Rupees Ten Lakhs only)** in accordance with the provisions of this RFP. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5 The Selected Bidder shall also submit to the Authority, for the performance of its obligations hereunder during the Operations Period, to the Authority, within 21 (twenty one) days of the date of issuance of Notice of Award (NOA), a Performance Security, which shall be equivalent to higher of : (i) 6 (six) months Annual Concession Fee (as quoted by the Selected Bidder and accepted by HPIDB) or (ii) 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, from a Nationalized/ Scheduled Bank in India payable at Shimla; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule B of the Agreement. The Performance Security shall be maintained by the Operator during the entire tenure of the Project and upto the end of the O&M Agreement Period. All charges, fees, costs and expenses related to the Bank Guarantee shall be solely borne by and paid by the selected Operator.
- 1.2.6 The Selected Bidder shall within 21 (twenty one) days of issuance of the NOA, shall make a payment of Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only) net of taxes, in the form

of Demand Draft, in favour of “Himachal Pradesh Infrastructure Development Board”, payable at Shimla, Himachal Pradesh against expenses incurred (“**Project Development Fee**”) in respect of the Project towards the following:

- (a) Engagement of various consultants;
- (b) Project promotions including issuance of advertisement in print media, conducting pre-bid meeting(s) etc. by HPIDB

The Selected Bidder shall make payment of all taxes, levies etc. as may be applicable at the time of payment. This Project Development Fee shall be irrevocable & non-refundable.

1.2.7 The Bidders are invited to examine and inspect the Project Facility in *a detailed manner*, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

1.2.8 The Bids are invited for the Project on the basis of the highest Annual Concession Fee (the "**Annual Concession Fee**") to be paid by the selected Bidder during the term of the O&M Agreement to the Municipal Corporation, Shimla. The Annual Concession Fee shall constitute the sole criteria for evaluation of Bids. Subject to this RFP, the Project will be awarded to the Bidder quoting the highest Annual Concession fee. The Annual Concession Fee shall be increased by 5% (five percent) of the previous value, at the end of every (365 days) year from the Effective Date.

Generally, the Bidder who has quoted the highest Annual Concession Fee (*as defined in the Agreement*), shall be the Selected Bidder; the remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3.8 of this RFP, be invited to match the Bid submitted by the highest Bidder in case such highest Bidder withdraws or afterwards get rejected for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the HPIDB may, in its discretion, invite fresh Bids from all Bidders or annul the Bidding Process, as the case may be.

1.2.9 The Operator will be entitled to levy, charge and appropriate, User Charges from Users of the Project, as prescribed in this RFP document. However, the parking charges shall be as per the rates notified by the Municipal Corporation, Shimla for parking, from time to time. As per the trend in the past, revisions in rates are done @ 10% every two years.

1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing to the address of HPIDB, or by fax on the number : 0177-2627696, and by e-mail on hpidb-hp@nic.in, addressed to the **Chief General Manager, Himachal Pradesh**

**Infrastructure Development Board.** The email subject line and envelopes/ communication shall clearly bear the following identification/ title:

**"Queries/ Request for Additional Information: RFP for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh".**

### 1.3. SCHEDULE OF BIDDING PROCESS

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

Event Description	Date
Issue of RFP Notice on website	on or before 03-12-2019
Pre – Bid meeting	12-12-2019 at 11. 00 hours
Last date for receiving queries	11-12-2019
HPIDB's response to queries	Shall be notified later
Bid Due Date	31-12-2019 upto 1600 hours
Opening of Technical Proposals	On Bid Due Date at 16:30 hours or thereafter
Opening of Financial Proposals	To be intimated
Notice of Award (NOA)	To be notified separately
Validity of Bids	120 days of Bid Due Date
Furnishing of Project Development Fee	Within 3 weeks from the date of issuance of NOA
Submission of Performance Security	Within 3 weeks from the date of issuance of NOA
Signing of Agreement	Within 30 working days of date of NOA

## 2 INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 ELIGIBILITY OF BIDDERS

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

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), joining together to implement the Project. However, no Bidder applying individually or as a

member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and the Consortium.

- (b) A Bidder may be a natural person, private entity, partnership firm, company or society or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.2 herein below.

2.1.2 Where the Bidder is a single entity or a Consortium, it shall be required to execute the Agreement and implement the Project. In case the Bidder is a Consortium, it shall comply with the following requirements:

- (a) Number of members in a consortium shall not exceed 3 (three);
- (b) Subject to the provisions of Clause (a) above, the proposal should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”). The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-V, signed by all the other members of the Consortium;
- (d) The Proposal should include a brief description of the roles and responsibilities of individual members in the consortium, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Bidder cannot at the same time apply in Individual capacity and also be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;
- (f) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-VII (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, inter alia:
  - i. 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 Consortium;
  - ii. Clearly outline the proposed roles and responsibilities, if any, of each member;
  - iii. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Agreement and the statement to this effect shall also be included in the Jt. Bidding Agreement and the Agreement; and



- (g) 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.

2.1.3 **Technical Qualification:** The Bidder to be eligible for pre-qualification and short-listing, shall have to satisfy the following conditions:

- (a) **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder should fulfill any of the below mentioned criteria:

Bidder shall have undertaken the following **Eligible Projects** in the past 3 (three) years preceding the Bid Due Date such that :

- (i) Minimum average Annual Turnover of the Bidder is **Rs.1,00,00,000/- (Rupees One Crore)** in the past 3 (three) years preceding the Bid Due Date from the business of catering, hotels, parking cum commercial complex, restaurants, holiday centers and other short stay accommodations, cafés, canteens, clubs lodging, event planning and management, theme parks;

**OR**

- (ii) Minimum average Annual Turnover of the Bidder is **Rs.2.00Crores (Rupees Two Crore)** in the past 3 (three) years preceding the Bid Due Date from any business;

**OR**

- (iii) Minimum average Annual Turnover of the Bidder is **Rs75.00 lakh (Rupees Seventy Five Lakh)** in the past 3 (three) years preceding the Bid Due Date from O&M project on PPP mode of any sector.

- (b) **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of **Rs.4,00,00,000/- (Rupees Four Crores only)** as on 31.03.2019.

2.1.4 In computing the Technical Capacity and Financial Capacity of the Bidder, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

2.1.5 For the purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or

indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.1.6 The Bidders shall enclose with its letter comprising the Bid, as per the format at **Appendix-I**, complete with its Annexes, the following:

- a. Certificate(s) from its Statutory Auditor stating the annual turnover from/ out of the Eligible Projects during the past 3 (three) years (i.e. for FY 2016-17, FY 2017-18, FY 2018-19) in respect of the Eligible Projects specified in paragraph 2.1.3 (a) (i), (ii) & (iii) above. In case a particular Eligible Project/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular Eligible Project/ contract by producing a certificate from its Statutory Auditor or the client. For the purpose of this RFP, **Turnover** shall mean the income received from sale of goods and services in respect of activities specified in Clause 2.1.3 (a) during the accounting period. Other incomes, including but not limited to interest income, income from sale of assets, shall not be included in the definition of Annual Turnover;
- b. Certificate(s) from its Statutory Auditor or Chartered Accountant, as the case may be, specifying the Net Worth of the Bidder as on 31.03.2019 and also specifying the methodology adopted for calculating such Net Worth conforms to the provisions of Clause 2.1.6.

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

- i **In case of a company:** the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation; and
- ii **In case of a society or a trust:** the sum of available corpus and reserves.
- iii **In case of any other entity/body corporate:** the aggregate value of the paid up capital and reserves of such entity, after deducting the aggregate value of the intangible assets.

## 2.2 GENERAL TERMS OF BIDDING

- 2.2.1 A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.2.2 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft O&M Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the O&M Agreement.
- 2.2.3 The Bidder is required to submit its financial proposal/bid in the format attached herewith as **Appendix – II**, clearly indicating the bid amount in both figures and words, and signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.2.4 The amount quoted by the Bidder in the financial proposal, shall be deemed/ construed as the Annual Concession Fee (exclusive of GST or any other tax as applicable thereon) to be quoted by the Bidder. The Annual Concession Fee shall be payable by the Operator to the Authority as per the terms and conditions of this RFP and the provisions of the Agreement. The Selected Bidder/ Operator shall pay GST and/ or any other tax as applicable over and above the quoted Annual Concession Fee to the Authority. All duties and taxes in consequence of its obligations under this RFP and the Agreement shall be directly borne by the Operator. The first quarterly installment of Annual Concession Fee shall be made on the Effective Date (*as defined in the Agreement*). The Annual Concession Fee shall escalate at the rate of 10% (ten percent) over the previous value after every 3 (three) years. The first such increase shall take place on the third anniversary of the Effective Date (*as defined in the Agreement*) and thereafter every subsequent increase shall take place on the same date at the end of each set of three years.
- 2.2.5 The Bidder shall deposit a Bid Security equivalent/ amounting to **Rs.10,00,000/- (Rupees Ten Lakhs only)** in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of an unconditional and irrevocable Bank Guarantee, from a Nationalized/ Scheduled Bank as may be acceptable to the HPIDB and as per format at **Appendix – III**.
- 2.2.6 The validity period of the Bid Security Bank Guarantee, shall not be less than 120 (one hundred and twenty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days,, which shall be extended by the Bidder from time to time. The Bid shall be summarily

rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 90 (ninety) days from the Bid Due Date or from the Date of signing of Agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder.

- 2.2.7 The Bidder should submit a Power of Attorney as per the format at **Appendix – IV**, authorizing the signatory of the Bid to commit the Bidder.
- 2.2.8 In case the Bidder is a Consortium, the members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at **Appendix – V**.
- 2.2.9 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.10 The Proposal and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.2.11 The Bidding Documents including this RFP and all attached documents are and shall remain the property of the HPIDB and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. The Bidders shall be liable to keep all information strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The HPIDB will not return any Bid or any information provided along therewith.
- 2.2.12 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. If in case, any Bidder is found to have a Conflict of Interest, shall be disqualified. In the event of disqualification, the HPIDB or the Authority, as the case may be, 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 or the Authority, as the case may be, for, inter alia, the time, cost and effort of the HPIDB or the Authority, as the case may be, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the HPIDB or Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:
- (i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or
  - (ii) a constituent of such Bidder is also a constituent of another Bidder; or

- (iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Bid of either or each of the other Bidder; or
- (vi) such Bidder has participated as a consultant to the HPIDB or the Authority in the preparation of any documents, design or technical specifications of the Project.

2.2.13 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the HPIDB or the Authority in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the NOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the Successful Bidder or Operator, as the case may be, after issuance of the NOA or execution of the Agreement, then notwithstanding anything to the contrary contained herein or in the NOA or the Agreement and without prejudice to any other right or remedy of the HPIDB or Authority, as the case may be, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the HPIDB or the Authority may have thereunder or otherwise, the NOA or the Agreement, as the case may be, shall be liable to be terminated without the HPIDB and/or the Authority being liable in any manner whatsoever to the Successful Bidder or Operator for the same.

2.2.14 This RFP is not transferable.

2.2.15 Any award of Concession pursuant to this RFP shall be subject to the terms of the Bidding Documents.

2.2.16 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal, either individually or as member of a Consortium.

2.2.17 A Bidder including any Consortium Member or Associate 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, Consortium Member or Associate, 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, Consortium Member or Associate.

2.2.18 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) 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
- (b) 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 Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the HPIDB and/ or the Authority from national security and public interest perspective. The decision of the HPIDB and/ or the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the HPIDB and/ or the Authority 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, 1997, as amended from time to time, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the HPIDB and the 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.

## **2.3 CHANGE IN COMPOSITION OF THE CONSORTIUM**

2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the Bidding process except as stated in Clause 2.3.1

2.3.2 Notwithstanding anything to the contrary contained in Clause 2.1, a Bidder may, within 15 (fifteen) days after the Bid Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.

**2.4 Deleted**

**2.5 COST OF BIDDING**

2.5.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The HPIDB shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

**2.6 SITE VISIT AND VERIFICATION OF INFORMATION**

2.6.1. The Bidders are advised to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, existing facilities, location, surroundings, climate, availability of power, water and other utilities, access to site, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

2.6.2. It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents and understood the same clearly;
- (b) received all relevant information requested from the HPIDB;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the HPIDB relating to any of the matters referred to in Clause 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 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 thereunder;
- (e) 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 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the HPIDB and/ or the Authority, or a ground for termination of the Agreement; and
- (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

- 2.6.3. The HPIDB and/ or the Authority shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the HPIDB and/ or the Authority.
- 2.6.4. The Municipal Corporation, Shimla intends to organize a site visit tour for all Bidders on the date of Pre-Bid conference.

## **2.7 RIGHT TO ACCEPT AND TO REJECT ANY OR ALL BIDS**

- 2.7.1. Notwithstanding anything contained in this RFP, the 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 whatsoever for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- 2.7.2. The HPIDB reserves the right to reject any Bid and appropriate the Bid Security if:
- (a) at any time, a material misrepresentation is made or uncovered, or
  - (b) the Bidder does not provide, within the time specified by the HPIDB, the supplemental information sought by the HPIDB for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the highest Bidder gets disqualified/ rejected, then the HPIDB reserves the right to:

- (i) invite the remaining Bidders to submit Bids in accordance with this RFP; or
  - (ii) take any such measure as may be deemed fit in the sole discretion of the 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 Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the HPIDB and/or the Authority, that one or more of the pre-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 NOA or entering into of the Agreement, and if the Bidder has already been issued the NOA or has entered into the 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 the HPIDB or the Authority, as the case may be, to the Bidder, without the HPIDB or the Authority, as the case may be, being liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, the HPIDB or the Authority, as the case may be, shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the HPIDB and/or the Authority for, 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.

- 2.7.4. The HPIDB and/ or the Authority reserve the right to verify all statements, information and documents submitted by the Bidder in response to this RFP or the Bidding Documents. Failure of the HPIDB and/or the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the HPIDB and/ or the Authority thereunder.

## **B. DOCUMENTS**

### **2.8 CONTENTS OF THE RFP**

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

<b>Invitation for Bids</b>	
Section 1	Introduction
Section 2	Instructions 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. Financial Proposal
- III. Bank Guarantee for Bid Security
- IV. Power of Attorney for signing of Bid
- V. Power of Attorney for Lead Member of Consortium
- VI. Guidelines of the Department of Disinvestment
- VII. Joint Bidding Agreement for Consortium

- 2.8.2. The Draft O&M Agreement provided by HPIDB and/or the Authority as part of the Bid Documents shall be deemed to be part of this RFP.

## **2.9 CLARIFICATIONS**

- 2.9.1. Bidders requiring any clarification on this RFP may notify the HPIDB in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The HPIDB shall endeavor to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded on the website [https:// http://himachalservices.nic.in/hpidb/](https://http://himachalservices.nic.in/hpidb/) without identifying the source of queries.
- 2.9.2. The HPIDB shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the 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.
- 2.9.3. The HPIDB may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the HPIDB shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by HPIDB or its employees or representatives shall not in any way or manner be binding on the HPIDB.

## **2.10 AMENDMENT/ MODIFICATION OF RFP**

- 2.10.1. 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 this RFP by the issuance of Addenda.
- 2.10.2. Any Addendum/ Modification thus issued will be uploaded on the website [https:// http://himachalservices.nic.in/hpidb/](https://http://himachalservices.nic.in/hpidb/).
- 2.10.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the HPIDB may, at its own discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BIDS**

### **2.11 LANGUAGE**

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 Proposal 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. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

## **2.12 FORMAT AND SIGNING OF BID**

- 2.12.1. The Bidder 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.
- 2.12.2. The Bid shall be typed or written in indelible ink and signed by the Authorized Signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers and shall be hard bound.

## **2.13 SEALING AND MARKING OF BIDS**

- 2.13.1. The documents of Technical Proposal shall be placed in a separate envelope and marked as prescribed hereunder -

### **“Envelope 1: Technical Proposal”**

- a) Document Fee of Rs.5,000/- (Rupees Five Thousand only) plus GST at the applicable rates in the form of demand draft drawn on a Nationalized/ Scheduled Bank in favour of “**Himachal Pradesh Infrastructure Development Board**” payable at Shimla, Himachal Pradesh.
- b) Letter comprising the Bid in the prescribed format (**Appendix-I**) along with Annexes and supporting documents
- c) Bid Security in the prescribed format (**Appendix – III**);
- d) Power of Attorney for signing of Bid in the prescribed format (**Appendix – IV**);
- e) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (**Appendix – V**);
- f) Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at **Appendix-VII**;
- g) Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- h) Certified copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding three years; and
- i) A copy of the Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove.

2.13.2. The Bidder shall submit the Financial Proposal (the “**Bid**”) in the format specified at **Appendix-II**, and seal it in an envelope and mark the envelope as “**Envelope 2: Financial Proposal**”.

2.13.3. All the envelopes specified above shall be placed in an outer envelope, which shall be sealed. Each of the three envelopes shall clearly bear the following identification:

**“Bid for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh”**

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.13.4. Each of the envelopes shall be addressed to:

ATTN. OF: The Chief General Manager,  
Himachal Pradesh Infrastructure Development Board,  
ADDRESS: Himrus Building, Circular Road,  
Shimla, Himachal Pradesh.

Email – hpiddb-hp@nic.in  
TEL - 0177-2626696, 2627312  
FAX - +91 0177-2627696

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.

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

## **2.14 BID DUE DATE**

2.14.1. Bids should be submitted before 1600 hours IST on the Bid Due Date at the address provided herein in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person in charge of the Receipt-Dispatch section of 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 [https:// http://himachalservices.nic.in/hpidb/](https://http://himachalservices.nic.in/hpidb/).

## **2.15 LATE BIDS**

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 Bid shall be furnished in the format at **Appendix – II** 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 undertake the Project in accordance with this RFP and the provision of the Agreement. The Annual Concession Fee shall escalate at the rate of 10% (ten percent) after every 3 (three) years to be reckoned from the Effective Date.
- 2.16.2. The Project will be awarded to the Bidder quoting the highest Annual Concession Fee.

## **2.17 MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS**

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

## **2.18 REJECTION OF BIDS**

- 2.18.1. The HPIDB reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory on the part of the HPIDB to accept any Bid or to give any reasons for their decision.
- 2.18.2. The HPIDB reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## **2.19 VALIDITY OF BIDS**

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the HPIDB.

## **2.20 CONFIDENTIALITY**

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

## **2.21 CORRESPONDENCE WITH THE BIDDER**

The HPIDB shall not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

### **A. BID SECURITY**

#### **2.22 BID SECURITY**

2.22.1. The Bidder shall furnish as part of its Bid, a Bid Security of Rs. 10,00,000/- (Rupees Ten 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 – III (the “Bank Guarantee”) and having a validity period of not less than 120 (one hundred and twenty) days from the Bid Due Date, as may be extended by the Bidder from time to time.

2.22.2. 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. 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.

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

2.22.4. Save as provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by the HPIDB, without any interest, as promptly as possible on acceptance of the Bid of the Successful Bidder or when the Bidding process is cancelled

by the HPIDB. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the HPIDB give the name and address of the person in whose favour the said demand draft shall be drawn by the HPIDB for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.22.5. The Successful Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Agreement and furnishing the Performance Security in accordance with the provisions thereof.

2.22.6. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the HPIDB shall be entitled to forfeit and appropriate the Bid Security as compensation / damages to the HPIDB in any of the events specified herein below.

2.22.7. 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:

- a) If a Bidder submits a non-responsive Bid;
- b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
- c) 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;
- d) In the case of Successful Bidder, if it fails within the specified time limit -
  - i) to sign the Agreement and/or
  - ii) to furnish the Performance Security within a period of 3 weeks from the date of issuance of Notice of Award

### **3 EVALUATION OF BIDS**

#### **3.1 OPENING AND EVALUATION OF BIDS**

3.1.1 HPIDB shall open the Technical Proposals at 1630 hours IST on the Bid Due Date, at the office of HPIDB and in the presence of the Bidders who choose to attend. However, HPIDB reserves the right to change the time of opening of bid in case of any exigency.

3.1.2 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 Proposals of

only those Bidders who meet the eligibility criteria specified in this RFP at such date and time as intimated by the HPIDB.

- 3.1.3 The HPIDB will subsequently examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.1.4 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 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.
- 3.1.5 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the HPIDB as incorrect or erroneous, the HPIDB shall reject such claim and exclude the same from evaluation. Where any information is found to be patently false or amounting to a material misrepresentation, the HPIDB reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.

### **3.2 EVALUATION OF TECHNICAL PROPOSAL**

- 3.2.1 The Bidder's competence and capability shall be evaluated on the basis of the following parameters:
  - a) Technical Capacity; and
  - b) Financial Capacity

### **3.3 TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION**

- 3.3.1 Subject to the provisions of Clause 3.4, the experience mentioned in the criteria(a) of Clause 2.1.3, would qualify as Technical Capacity and eligible experience in relation to eligible projects as stipulated in Clauses 3.3.3, 3.3.4 and 3.3.5 (the "**Eligible Experience**"):
- 3.3.2 HPIDB reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the HPIDB in respect of such Bid.
- 3.3.3 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
- 3.3.4 The entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed.
  - (a) The entity claiming experience under Clause 2.1.3 (a)(i) or 2.1.3 (a)(ii) or 2.1.3 (a)(iii), shall, during the last 3 (three) financial years preceding the Bid Due Date, have



collected and appropriated the revenues from the project/ business such that the turnover of the Bidder from such eligible projects/ business meets the requirements set forth therein.

- (b) The entity claiming experience under Clause 2.1.3 (b), shall, in the last financial year preceding the Bid Due Date, have the minimum Net Worth as required.

### **3.4 TESTS OF RESPONSIVENESS**

3.4.1 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:

- (a) Technical Proposal is received as specified in Clause 2.12.2
- (b) Financial Proposal is received as per the format at **Appendix – II**;
- (c) it is received by the Bid Due Date including any extension thereof pursuant to Clause 1.3
- (d) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.11 and 2.12
- (e) it is accompanied by the Bid Security as specified in Clause 2.2.5
- (f) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.2.7 and 2.2.8 as the case may be;
- (g) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

### **3.5 DETAILS OF EXPERIENCE**

3.5.1 The Bidder should furnish the details of Eligible Experience for the last 3 (three) financial years or last financial year immediately preceding the Bid Due Date, as applicable.

3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of **Appendix-I**.

3.5.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of **Appendix-I**.

### **3.6 FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION**

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

- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3 The Bidder must establish minimum Net Worth specified in Clause 2.1.3 (b), and provide details as per format at Annex-III of **Appendix-I**.

### **3.7 SHORTLISTING OF BIDDERS**

- 3.7.1 In the first step of evaluation, Technical Proposals of Bidders adjudged responsive in terms of Clause 3.4.1 shall be considered for Technical evaluation as per Clauses 2.1 and 3.3 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.
- 3.7.2 Only those Bids which are found to be substantively responsive to the requirements of this RFP document after verifying the Bid Security submitted will be evaluated. 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 project experience to determine the technical and financial competency/ capability of the Bidder (of all Members in case of a Consortium) vis-à-vis the requirements of Clauses 2.1.1, 2.1.2 & 2.1.3 of this RFP.
- 3.7.3 The Bidder who meets the eligibility criteria set forth in Clauses 2.1.1 to 2.1.3 in terms of Eligible Experience in respect of Eligible Projects under this RFP, will be shortlisted and eligible for the Financial Proposal Phase.
- 3.7.4 The Bidders who are shortlisted as per Clauses 3.7.2 & 3.7.3 above will be informed about the opening date of the Financial Proposal on the website and the Financial Bid shall be opened in the presence of the shortlisted Bidders who choose to attend.

### **3.8 SELECTION OF BIDDER**

- 3.8.1 Upon opening of Financial Bids, the Bidder quoting the highest Annual Concession Fee offered to the Authority shall be declared as successful (the “**Selected Bidder**”).
- 3.8.2 In the event that two or more Bidders quote the same amount of Annual Concession Fee (the “**Tie Bidders**”), HPIDB reserves the right either to:
- i. invite fresh Bids from such Tied Bidders; or
  - ii. take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding Process; 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.
- 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 Successful 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 Successful 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 Successful Bidder.
- 3.8.4 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.8.3 above, HPIDB may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.8.5 After selection, a Notice of Award (the “**NOA**”) shall be issued, in duplicate, by the HPIDB to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the NOA, sign and return the duplicate copy of the NOA in acknowledgement thereof. In the event the duplicate copy of the NOA duly signed by the Selected Bidder is not received by the stipulated date, the HPIDB may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the HPIDB on account of failure of the Selected Bidder to acknowledge the NOA, and the next eligible Bidder may be considered.
- 3.8.6 After acknowledgement of the NOA as aforesaid by the Selected Bidder, it shall execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation in the Agreement. Prior to signing of Agreement, the Selected Bidder / Operator must satisfy the following conditions:
- (i) Selected Bidder / Operator has submitted the Performance Security to the Authority;

and

- (ii) Paid the Project Development Fee to HPIDB.

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

### **3.9 CONTACTS DURING BID EVALUATION**

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

## **4 FRAUD AND CORRUPT PRACTICES**

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the NOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the NOA or the Agreement, the HPIDB and/or the Authority shall reject a Bid, withdraw the NOA, or terminate the 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.
- 4.2 Without prejudice to the rights of the HPIDB and/or the Authority under Clause 4.1 hereinabove and the rights and remedies which the HPIDB and/or the Authority may have under the NOA or the Agreement, if a Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the NOA or the execution of the Agreement, such Bidder or the Operator shall not be eligible to participate in any tender or RFP issued by the HPIDB and/or the Authority during a period of 2 (two) years

from the date such Bidder or Operator, as the case may be, is found by the HPIDB and/or the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices ,as the case may be.

4.3 For the purposes of this Clause 4 the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process(for avoidance of doubt offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the HPIDB and/or the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the NOA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the HPIDB and/or the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the NOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the NOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the HPIDB and/or the Authority in relation to any matter concerning the Project;
- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the HPIDB and/or the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

(f) “**unfair practice means**” a practice which, for the purpose of promoting the sale or promotion etc., adopts any unfair method or unfair or deceptive practice including (A) the practice of making any statement, whether in writing or by visible representation which-(i) falsely represents that the services are of a particular standard or grade; (ii) represents that the Bidder has approval or affiliation which the bidder does not have; (iii) makes a false or misleading representation concerning the services (B) the Bidder permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not offered; (d) the promoter indulges in any fraudulent practices

## **5 PRE-BID CONFERENCE**

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

**Office of Commissioner**

**Municipal, Corporation, Mall Road, DC Office, Shimla.**

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

5.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the HPIDB. HPIDB shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

5.3 The Authority shall organize a Site visit on the day of the Pre-Bid Conference for the Bidders. The Bidders are advised to attend the Pre-Bid Conference and take the Site visit in order to get acquainted with the built-up area, facilities and amenities at the Site and accordingly prepare their Bids.

## **6 MISCELLANEOUS**

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

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

- (a) 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;
- (b) consult with any Bidder in order to receive clarification or further information;
- (c) retain any information and/ or evidence submitted to the HPIDB and/or the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
- (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

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

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## APPENDIX I

### LETTER COMPRISING THE BID

(Refer Clause 2.12.1)

Dated:

To,

**The Chief General Manager,  
Himachal Pradesh Infrastructure Development Board,  
Himrus Building, Circular Road,  
District Shimla,  
Himachal Pradesh.**

**Sub: Proposal for Project - Operation, Maintenance, Management and Transfer of Tutikandi  
Parking-cum-Commercial Complex at Shimla, Himachal Pradesh**

Dear Sir,

- 1) With reference to the RFP document dated .....1, I/we, having examined the RFP document and understood its contents, hereby submit my/our Proposal for the aforesaid Project. The Proposal is unconditional and unqualified.
- 2) I/ We acknowledge that the HPIDB will be relying on the information provided in the Proposal and the documents accompanying such Proposal of the Bidders, and we certify that all information provided in the Proposal and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
- 3) This statement is made for the express purpose of qualifying as a Bidder for the operation, maintenance and management of the aforesaid Project.
- 4) I/ We shall make available to the HPIDB any additional information it may find necessary or require to supplement or authenticate the Proposal statement.
- 5) I/ We acknowledge the right of the HPIDB to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

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<sup>1</sup>All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder



- 6) I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
- 7) I/ We declare that:
- (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the HPIDB.
  - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.12 and 2.2.13 of the RFP document; and
  - (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 proposal issued by or any agreement entered into with the HPIDB or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 8) I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Proposal that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.6 of the RFP document.
- 9) I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Technical Capacity and Financial Capacity criteria and meet all the requirements as specified in the RFP document and are qualified to submit a Bid.
- 10) I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for qualification.
- 11) I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on

our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

- 12)I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 13)I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
- 14)I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the Government of India vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at **Appendix-VI** thereof.
- 15)I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP; we shall intimate the HPIDB of the same immediately.
- 16)The Statement of Legal Capacity (Document of Authorisation) as per format provided at **Annex-V in Appendix-I** of the RFP document, and duly signed, is enclosed. The power of attorney for signing of proposal and the power of attorney for Lead Member of consortium, as per format provided at **Appendix IV and V** respectively of the RFP, are also enclosed.
- 17)I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the HPIDB 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.
- 18)I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
- 19){ We agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Agreement till the end of the Agreement Period in accordance with the Agreement. }<sup>2</sup>

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

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<sup>2</sup> Omit if the Bidder is not a Consortium

Yours faithfully,

(Signature, name & designation of the Authorised Signatory)  
Name and seal of the Bidder/ Lead Member

Date:

Place:

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

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**ANNEX-I**  
**DETAILS OF BIDDER**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the registered office, corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibility in this Project]:
3. Details of individual(s) who will serve as the point of contact/ communication for the HPIDB:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  - (g) Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) Fax Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.1.2 (f) should be attached to the Proposal.
  - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role*	Share in the Consortium
1.			
2.			
3.			

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

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

**Name of Bidder/ member of Consortium:**

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

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates 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):

**ANNEX-II****TECHNICAL CAPACITY OF THE BIDDER<sup>@</sup>***(Refer to Clauses 2.1.3 (a) (i), (ii) & (iii), 3.3 of the RFP)*

Project Code <sup>**</sup>	Details of Eligible Project	Experience (Equivalent Rs. lakhs) <sup>§</sup>			
		Annual Turnover%			
		FY-----	FY.....	FY.....	Average Annual Turnover
a.					
b.					
c.					
d.					

<sup>@</sup> Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.4 and/ or by a project company eligible under Clause 3.3 In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 3.6.2

<sup>#</sup> A Bidder should use separate rows to demonstrate own projects and projects of Consortium Members, clearly indicating in each row name of the entity whose experience is being claimed. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.4 shall be provided.

<sup>\*</sup> Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, OMM means Operation & Maintenance Member, OM means Other Member.

<sup>\*\*</sup> Refer Annex-IV of this Appendix-I. Add more rows if necessary.

<sup>§</sup> For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 70 (seventy) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

<sup>%</sup> In case the bidder is demonstrating its technical capacity and experience under clause 2.1.3 (a) (i), (ii) & (iii)

**ANNEX-III****FINANCIAL CAPACITY OF THE BIDDER***(Refer to Clauses 2.1.3 (b) and 3.6 of the RFP)***(In Rs. crores<sup>\$\$</sup>)**

<b>Bidder Type</b>	<b>Net Worth</b>
<b>Single entity Bidder</b>	
<b>Joint Venture Member 1</b>	
<b>Joint Venture Member 2</b>	
<b>Joint Venture Member3</b>	
<b>TOTAL</b>	

Note:

- **The above Net worth should be in positive.**
- Audited Balance Sheets, Financial Statements and Annual Reports (where the Bidder is a Company) and Profit & Loss statements of the Bidder (of each member, in case of a Joint Venture) of the last 3 (three) year preceding the Bid Due Date shall be enclosed. The financial statements shall:
  - a. reflect the financial situation of the Bidder or Joint Venture Members;
  - b. be audited by a chartered accountant/ statutory auditor;
  - c. be complete, including all notes to the financial statements; and
  - d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- The Bidder shall provide an Auditor's / Chartered Accountant certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such net worth.
- For the purposes of this RFP the term net worth means following:

"**Net Worth**" for company shall mean the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

**Net Worth for Partnership Firm** would mean:- [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]

**Net worth for Trust or Society** would mean: - Capital/Corpus +Free Reserves.

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*\$\$For conversion of other currencies into rupees, see note below Annex-II Appendix-I.*

**Net Worth for Individual Person** shall mean:- Assets (including cash) LESS All Liabilities.

**Net Worth for Sole Proprietorship** would mean:- Total Assets - Total Liabilities

Signature \_\_\_\_\_  
Name \_\_\_\_\_  
Designation \_\_\_\_\_  
Name of Bidder \_\_\_\_\_  
Stamp/ Company seal \_\_\_\_\_  
Date \_\_\_\_\_

**Certificate from the Statutory Auditor/ Chartered Accountant**

This is to certify that the information contained above is correct as per the Books of Accounts of the {name of the Bidder/ member of the Joint Venture} whose Net Worth as on: March 31, 2019 is Rs. \_\_\_\_\_ (rupees in words).

(Signature for the Authorised Signatory of the Statutory Auditor/ Chartered Accountant of Bidder/ Member of Consortium)

Name of the Authorised Signatory:  
Designation:  
Name of the firm:  
Seal of the Firm:

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**ANNEX-IV****DETAILS OF ELIGIBLE PROJECTS***(Refer to Clauses 2.1.3 (a), 3.3 of the RFP)*

Project code:

Member code:

Item (1)	Refer Instruction (2)	Particulars of the Project (3)
Title of the project		
Category under cl. 2.1.3 (a) (i) Parking cum Commercial Complex/ hotels/ restaurants/ holiday centers and other short stay accommodations/ clubs lodging/ event planning and management/ theme parks/ entertainment and recreation ; <b>OR</b> (ii) O&M Project on PPP; <b>OR</b> (iii) Any other business		
Turnover from activities specified in Clause 2.1.3 (a) (i)/ (ii)/ (iii): FY 2018-19 FY 2017-18 FY 2016-17		
Entity for which the O&M project undertaken & location		
Details of Eligible Projects : • Nature of the Project • Location • Activities undertaken • Detailed description of the Project		
Date of commencement of contract		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	5	

<b>Certificate from the Statutory Auditor</b>
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This is to certify that the information contained above is correct as per the Books of Accounts of the Bidder.

Name of the Authorised Signatory:

Designation:

Name of the Audit firm: (Signature for the Authorised Signatory of the Statutory Auditor)

Seal of the Firm

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.1.3 (a) (i) / (ii) / (iii) of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Proposal. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
5. Certificate from the Bidder’s statutory auditor<sup>s</sup> must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

**Certificate from the Statutory Auditor regarding Eligible Projects Ø**

Based on its books of accounts and other published information authenticated by it, this is to certify that..... (name of the Bidder/Member/Associate) is/was an equity shareholder in..... (title of the project company) and holds/ held Rs..... cr. (Rupees..... crore) of equity (which constitutes .....%<sup>€</sup> of the total paid up and subscribed equity capital) of the project company from ..... (date) to ..... (date)<sup>‡</sup>.

The project, namely,....., is located at .....and is being operated and maintained by..... (name of the Bidder/Member/Associate) since ..... (start date) to ..... (end date).

We further certify that..... (name of the Bidder/Member/Associate) had Annual Turnover, in respect of activities specified in Clause 2.1.3 (i) / (ii) / (iii) of RFP, from the project in past three financial years, as given below in an year-wise format:

Year.....:Rs .....

Year.....: Rs .....

Year.....: Rs .....

Name of the audit firm:

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

Date:

6. Bidders are required to produce client certificates, invoices, order letter, completion certificates etc. to substantiate the experience demonstrated.
7. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.4 the Bidder should also provide a certificate in the format below:

**Certificate from Statutory Auditor/ Company Secretary regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Associate) is held, directly or

indirectly<sup>£</sup>, by ..... (name of Bidder). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.1.4 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder in the Associate}

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of Date: the authorised signatory).

<sup>§</sup>In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

<sup>£</sup> In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

**ANNEX-V**

**STATEMENT OF LEGAL CAPACITY**

*(To be forwarded on the letterhead of the Bidder)*

Ref. Date:

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

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

*\*Please strike out whichever is not applicable.*

**APPENDIX – II**  
**FINANCIAL PROPOSAL**  
*(Refer Clauses 2.2.3 and 2.15.1)*

Dated: \_\_\_\_\_

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

**Sub: Bid for Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh**

Dear Sir,

1. With reference to your RFP document dated \*\*\*\*\*, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. All information provided in the Bid and in the Appendices is true and correct.
3. We acknowledge that our Consortium/ proposed Consortium shall be short-listed on the basis of Technical Capacity and Financial Capacity of us and our Associates.
4. [I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, I/We shall inform the HPIDB forthwith along with all relevant particulars and the HPIDB may, in its sole discretion, disqualify our Consortium or withdraw the Notice of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the HPIDB being liable to us in any manner whatsoever.]
5. In the event of my/ our being declared as the Successful Bidder, I/We agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the HPIDB or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.

7. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP; draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
8. I/We offer a Bid Security of Rs.10,00,000/- (Rupees Ten Lakhs only) to the HPIDB by way of Demand Draft or Bank Guarantee<sup>3</sup>, in accordance with the RFP Document, exclusive of GST which shall payable separately.
9. 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 is not awarded to me/us or our Bid is not opened.
10. I/We hereby submit our Bid and offer an Annual Concession Fee in the form of Rs \_\_\_\_ (in words) to the HPIDB for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement. Any GST payable over the aforesaid Annual Concession Fee shall be made separately by me/ us.
11. The Annual Concession Fee shall escalate at the rate of 10% (ten percent) over the previous value (of applicable Concession Fee) after every 3 (three) years. The first such increase shall take place on the third anniversary of the Effective Date (as defined in the Agreement) and thereafter every subsequent increase shall take place on the same date at the end of each set of three years.
12. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
13. I/We agree and undertake to abide by all the terms and conditions of the RFP document.

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<sup>3</sup> Retain as applicable

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

Yours faithfully,

(Signature of the Authorised signatory)  
(Name and designation of the of the Authorised signatory)  
Name and seal of Bidder

Date:

Place:

*Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.*

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**APPENDIX – III**  
**BANK GUARANTEE FOR BID SECURITY**

*(Refer Clauses 1.2.4)*

B.G. No.

Dated:

1. In consideration of you, **The Chief General Manager, Himachal Pradesh Infrastructure Development Board (hereinafter the "HPIDB")**, having its office at Himrus Building, Circular Road, Shimla, Himachal Pradesh, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of \_\_\_\_\_ [a Company registered under provision of the Companies Act, 1956/ 2013] and having its registered office at \_ [and acting on behalf of its Consortium] (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Project–Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at, Shimla, Himachal Pradesh (hereinafter referred to as the (“**Project**”) pursuant to the RFP Document dated\*\*\*\*\* issued in respect of the Project and other related documents (hereinafter collectively referred to as “**Bidding Documents**”), we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at Shimla, Himachal Pradesh \_\_\_\_\_ (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 2.2.5 read with Clause 2.2.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the HPIDB an amount of Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only) at the branch in Shimla, Himachal Pradesh, as bid security (hereinafter referred to as the “**Bid Security**”) 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 amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the



claim of the HPIDB is disputed by the Bidder or not merely on the first demand from HPIDB stating that the amount claimed is due to HPIDB by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \*\*\*\*\* (Rupees \*\*\*\*\* only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 120 (one hundred and twenty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the 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 the HPIDB that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the 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, the 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 Notice 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 the HPIDB, and the Bank shall not be released from its liability under these presents by any exercise by the 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 the HPIDB or any indulgence by the HPIDB to the said Bidder or by any change in the constitution of the 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 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 who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the 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 the 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 the 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. This Bank Guarantee no. \_\_\_\_\_, dated \_\_\_\_\_ shall 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 authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

**APPENDIX – IV**

**POWER OF ATTORNEY FOR SIGNING OF BID**

*(Refer Clause 2.2.7*

Know all men by these presents, We, \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of \_\_\_\_\_], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Project –Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh proposed or being developed by the Municipal Corporation, Shimla (the “Authority”) including but not limited to signing and submission of all proposals, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the HPIDB, representing us in all matters before the HPIDB and/or Authority, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the HPIDB and/or Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the 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 lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF \_\_\_\_\_, 20\*\*.

(Signature)

(Name, Title and Address)

Witnesses:

- 1.
- 2.

Accepted

[Notarised]

(Signature)

(Name, Title and Address of the Attorney)

**Notes:**

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

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**APPENDIX – V**  
**POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM**

*(Refer Clause 2.2.8)*

Whereas the **Himachal Pradesh Infrastructure Development Board** (the “**HPIDB**”) has invited bids from eligible parties for the Project –Operation, Maintenance, Management and Transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh (the “**Project**”).

Whereas, \_\_\_\_\_, and (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, \_\_ having our registered office at \_\_\_\_\_ and M/s. \_\_, having our registered office at \_ \_\_\_\_\_ [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s -----, having its registered office at \_\_, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project and subsistence of the Agreement, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all bids and other documents and writings, participate in bidders” and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with HPIDB and/ or 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 Consortium’s bid for the Project and/ or upon award thereof till the Agreement is entered into with the Municipal Corporation, Shimla.

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

AND hereby also ratify and confirm that if we are selected as the Successful Bidder, then the Lead Member of the Consortium shall sign the Agreement and all the Consortium members shall be jointly and severally liable towards the Project, throughout the Agreement Period.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THISDAY OF 20\*\*.

For \_\_\_\_\_ –

(Name & Title)

For \_\_\_\_\_ –

(Name & Title)

Witness:

1.

2.

(Executants)

(To be executed by all the Members of the Consortium)

**Notes:**

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the*

*person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

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**APPENDIX – VI**  
**GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT**  
*(Refer Clause 1.2.1)*

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

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

OFFICE MEMORANDUM

**Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment**

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

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the



two concerns are substantially controlled by the same person/ persons.

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**APPENDIX VII**  
**JOINT BIDDING AGREEMENT**

(Refer Clause 2.12.1

*(To be executed on Stamp paper of appropriate value)*

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

**AMONGST**

\_\_\_\_\_, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at \_\_\_\_\_ (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

\_\_\_\_\_, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at \_\_\_\_\_ (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

\_\_\_\_\_, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at \_\_\_\_\_ (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

**WHEREAS,**

- (A) Himachal Pradesh Infrastructure Development Board, \_\_\_\_\_, represented by its Chief General Manager, and having its principal offices at \_\_\_\_\_ (hereinafter referred to as the “HPIDB” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited proposals (the “**Proposals**”) by its Request for Proposal No ..... dated ..... (the “**RFP**”) for qualification and short-listing of bidders for operation, maintenance, management and transfer of Tutikandi Parking-cum-Commercial Complex at Shimla, Himachal Pradesh (the “**Project**”).
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall enter into an Agreement with the Municipal Corporation, Shimla and for performing all its obligations as the Operator in terms of the Agreement for the Project.

**4. Role of the Parties**

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process;
- (b) Party of the Second Part shall be {the Technical / Financial Member of the Consortium;}
- (c) Party of the Third Part shall be {the Technical / Financial Member of the Consortium;}

**5. Joint and Several Liability**

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

**6. Representation of the Parties**

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

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

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

**7. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the completion of the Project is achieved under and in accordance with the Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

**8. Miscellaneous**

- 8.1 This Joint Bidding Agreement shall be governed by laws of {India}.
- 8.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED For

SECOND PART by

SIGNED, SEALED AND DELIVERED For

THIRD PART by

(Signature):

(Signature):

(Signature):

(Name):

(Name):

(Name):

(Designation):

(Designation):

(Designation):

(Address):

(Address):

(Address):

In the presence of:

1.

2.

**Notes:**

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

**APPENDIX VIII**

## Detailed List of Facilities/ Amenities at the Project Site

<b>Parking at Tutikandi</b>							
Sr. No.	Particular	Level	Particulars	Qty/Area		Area	Capacity of Vehicles
1.	Top Floor	95.3	Restaurants	2	Nos	1876 Sq. ms.	
			Common area between restaurant	1	Nos		
			Gents Toilet	2	Nos		
			Ladies Toilet	2	Nos		
			Handicapped Toilets	2	Nos		
			Kitchen	2	Nos		
			Guard Room	2	Nos		
			Security Room	2	Nos		
			Toilet for Guard Room	2	Nos		
			Shops	4	Nos		
			Fountain with open Yard	1	Nos		
			Parking area in front of Restaurant	381	Sq. ms.		
			Machine Room on top of Restaurant	338	Sq. ms.		
			Control Room on top of Restaurant				
2.	Floor-10	91.4	Parking with two no.s of Toilet	3669.54	Sq. ms.		75

3.	Floor-9	87.8	Parking with two no.s of Dormitories and Toilet	3669.54	Sq. ms.		75
4.	Floor-8	84.2	Parking with two no.s of Toilet	3669.54	Sq. ms.		75
5.	Floor-7	80.6	Parking with two no.s of Dormitories and Toilet	3669.54	Sq. ms.		75
6.	Floor-6	77	Parking with two no.s of Toilet	3669.75	Sq. ms.		100
7.	Floor-5	73.4	Parking and Toilet for Govt. Offices	3669.75	Sq. ms.		100
8.	Floor-4	69.8	Floor reserved for Govt. Offices	3669.75	Sq. ms.		
9.	Floor-3	66.2	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
10.	Floor-2	62.4	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
11.	Floor-1	59	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
12.	Basement-2	55.4	Service Floor				
13.	Basement-1	51	Under Service Floor/ Pump Room				
			Under Ground Water Tank				
				3	2 lacks lrs		



			Fire Tank		capacity		
			Domestic Water Tank	2	2.5 ltrs capacity		
			Tanks for STP	1	Nos		
			Lifts	4	Nos		

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**STIPULATED FLOOR USAGE PLAN**  
*(to be followed mandatorily by the Selected Bidder/ Operator)*  
Kindly refer to clause 1.1.7 of the O&M Agreement

1. The Operator shall carry out its activities as per the stipulated floor usage plan and any alteration shall only be done with the prior written approval of the Authority, which the Authority may refuse at its discretion without assigning any reason.
2. The Operator shall be provided access to basements -1 and -2 for the purpose of regular maintenance works.
3. Floor No. 1 to Floor No. 5 (from bottom) are out of the scope of the Operator and are reserved for Government offices (on Floor No. 1 to Floor No. 4) and parking for vehicles of Government offices (on Floor No. 5). The Operator shall have no obligation of operation and maintenance towards these floors except to the extent specified in this Concession Agreement.
4. Floor No. 6 to Floor No. 10 shall be completely available to the Operator for parking as well as other usage as earmarked in the table above.
5. The Top Floor being the most important floor of the Project Facility is to be utilized commercially in a prudent manner by the Operator as per the particulars described in the table above without compromising on its aesthetics. The fountain is to be retained as it is. This floor is to be utilized for restaurants, cafes, toilets, kitchen, guard room, security room, machine room, control room, shops. The Operator may use the top floor for hosting marriage functions, parties, exhibitions and/ or other social gatherings either in the halls or in the open terrace or both.
6. The Operator cannot make any change or alteration to the above proposed usage plan without the prior written approval of the Authority.

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## AGREEMENT

This **CONCESSION AGREEMENT**<sup>1</sup> is entered into on this the [■] day of [■] (Month), 201\*\* at Shimla, Himachal Pradesh

### AMONGST

1. **Municipal Corporation, Shimla**, having its office at \_\_\_\_\_, Shimla, Himachal Pradesh acting through its Commissioner (hereinafter referred to as “**Concessioneing Authority**” or “**Authority**” which expression shall unless repugnant to the subject or the context include its successors) of One Part; AND
2. {\_\_\_\_\_}<sup>2</sup>, means the bidder<sup>3</sup> [a Consortium/ Company/ Society/ Firm] having its registered office at \_\_\_\_\_ (hereinafter referred to as the “**Operator**” which expression shall unless repugnant to the subject or the context include its successors) of the Other Part.

### WHEREAS:

- A. The Authority intends to operate, maintain and manage Tutikandi Parking-cum-Commercial Complex at, Shimla, Himachal Pradesh by engaging private sector entrepreneur through Public Private Partnership (PPP) on Operation, Maintenance, Management and Transfer (OMMT) basis (the “**Project**”).
- B. The Authority through Himachal Pradesh Infrastructure Development Board (HPIDB) had invited proposals for the selection of an Operator through the competitive route for the operation of the Project on OMMT basis from eligible Bidders, including inter alia M/s ..... {name of Successful Bidder/ Consortium comprising of \_\_\_\_\_}by issuing the Request for Proposal (“**RFP**”) document dated \_\_\_\_\_ 2019 containing inter-alia the minimum qualification for a Bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.
- C. On evaluation of the submitted proposals, HPIDB accepted the proposal of the M/s ..... {name of Successful Bidder/ Consortium comprising of M/s \_\_\_\_\_ as Lead Member, M/s \_\_\_\_\_ & M/s \_\_\_\_\_ as Members}(the “**Successful Bidder**”) and issued Notice of

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

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

<sup>3</sup> Refers to the single entity or the lead member of the consortium/joint venture, which is the selected bidder under the RFP.



Award No. \_\_\_\_\_ dated \_\_\_\_\_ (“NOA”) to {name of the Successful Bidder/ Consortium} requiring the Successful Bidder to inter alia:

- i. deliver to the Authority a legal opinion from the legal counsel of the Successful Bidder with respect to the authority of the Successful Bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days from the date of issue of NOA;
  - ii. furnish Performance Security by way of an unconditional and irrevocable Bank Guarantee in favour of The Commissioner, Municipal Corporation, Shimla;
  - iii. pay Project Development Fee to HPIDB; and
  - iv. execute this Agreement within 30 (thirty) days of the date of issue of NOA pursuant to complying with the aforesaid requirements from sr. no. (i) to (iii).
- D. The Selected Bidder has provided Performance Security by way of an unconditional and irrevocable Bank Guarantee No..... dated ..... from ..... Bank for an amount of Rs..... in favour of The Commissioner, Municipal Corporation, Shimla, has also paid Project Development Fee to HPIDB and delivered a legal opinion from its legal counsel in terms of (i) of Recital (C).

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

## **1. Definitions and Interpretation**

### **1.1. Definitions**

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

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

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

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

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

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

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

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

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

**“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Municipal Corporation, Shimla, Government of Himachal Pradesh and any other regulatory authority, as may be applicable.

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

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

**“Bank Guarantee”** means an irrevocable and unconditional bank guarantee issued by a bank in favour of The Commissioner, 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, Bank means any Nationalized/ Scheduled Bank in India acceptable to the Authority.

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

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

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

**“Clearance”** means, as on the date of execution of this Agreement, any consents, licences, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project;

**“Commercial Areas”** shall mean Parking spaces on different floors, spaces for restaurants, shops, dormitories, multipurpose hall(s), terrace, etc. as shown in the Schedule A within Project Facility which the Operator shall utilize for commercial purposes (including its maintenance and management) to generate revenue;

**“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Himachal Pradesh or Government of India, or Municipal Corporation, Shimla any

authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Facility or the performance of all or any of the services or obligations of the Operator under or pursuant to this Concession;

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

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

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

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

**“Effective Date”** means the date on which possession to the Project Facility is provided to the Operator, as a Licensee, with lease and license rights in respect of the Project Facility as per Article 5 of this Agreement.

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

**“Financial Year”** shall mean the year commencing from the 1<sup>st</sup> April of any calendar year and ending on 31<sup>st</sup> March of the next calendar year.

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning set forth in as per Article 12;

**“GOF”** means the Government of India;

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

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

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

**“Lenders”** shall mean the banks, financial institutions, international credit agencies that extend or agree to extend a credit facility to the Operator in relation to the Project;

**“License”** shall have the meaning set forth in Clause 10.1.2;

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

**“Operator’s Equipment”** means all machinery, apparatus and other things required for the operationalisation, maintenance and management of the Project Facility and the remedying of any defects;

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

**“Performance Security”** shall have the meaning as set forth in Clause 9.1

**“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”** shall mean operation, maintenance, management and Transfer of the Project Facility in accordance with the provisions of this Agreement during the subsistence of this Agreement;

**“Project Assets”** means all tangible and intangible assets relating to the Project Facility including, but not limited to, (a) Movable Assets; (b) rights over the Project Site in the form of licence, right-of-way or otherwise; (c) financial assets, such as receivables, cash and investments; (d) insurance proceeds and (e) Applicable Permits and authorisations relating to or in respect of the Project.

**“Project Facility”** shall mean and include the Commercial Areas, toilets on different floors, fountain with open yard, space for machine room, control room, security rooms, water tanks, septic tanks, lifts, fire tank, etc. at the Project Site as detailed out in Schedule-A, including all the amenities and facilities already installed/ to be installed, civil structures, movement areas, circulation areas, all external and internal services, drainage facilities, sign boards, electrical works, septic tank, fire tank, water tanks, 4 no. Lifts etc. that are constructed/ installed by the Authority and has been described in Schedule A and in respect of which right of way, right of use shall be granted by the Authority to the Operator as per the terms and conditions set forth in this Agreement. Also if the Operator constructs any additional structure during the currency of the Agreement Period with the prior written approval from the Authority/ Competent Authority, the same shall be considered as a part of the Project Facility.

**“Nodal Officer”** shall have the meaning set forth in Clause 11.5;

**“Project Site”** means the multi-level Tutikandi Parking cum Commercial Complex located at Tutikandi crossing in Shimla city which is handed over to the Operator along with the existing infrastructure (as listed under Schedule A), structures, facilities, assets (both movable and immovable) and equipment which Authority decides to handover to the Operator on *“as is where is”* basis, over which the Project is to be implemented by the Operator at its own cost and risk in accordance with the provisions of this Agreement, Applicable Law, Applicable Permits and Good Industry Practices.

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

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

**“SBI Base Rate”** shall mean the base rate as fixed by State Bank of India on 1st April of the respective financial year in which such rate is considered for calculation purposes or any modifications made by SBI from time to time;

**“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, including, but not limited to other Agreements with Operator and vendors of any goods or services to the Operator within the Project Facility;

**“Termination”** means the expiry of the Agreement Period or termination of this Agreement, in accordance with the provisions of this Agreement;

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

**“Transfer Date”** means the date on which this Agreement and the concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

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

**“User Charges”** means all charges, costs, fees, tariff, rentals and other amounts by whatever name called, payable to the Operator by the Users or any other Person, etc. pursuant to this Agreement, in lieu of parking charges (as per the rates notified by the Authority), sale of items, consumables, sub-licensing of shops, charges against hiring of hall, terrace etc. for marriage functions, running of restaurants, cafes, etc. and for the purpose of rendering of services by the Operator and utilisation of the Project Facility of the Project by such Users, tourists or other Persons, at any time (and from time to time) in relation to the Project during the validity of the Agreement;

**“Works”** means the operation, maintenance and management and rectifying or/and remedying of defects of the built-up spaces, halls, shops, car parking including provision of services and facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Agreement.

## **1.2. Interpretation**

1.2.1. In this Agreement, unless the context otherwise requires,

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

or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;

- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
- (j) 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;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (o) 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;
- (p) 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;
- (q) 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;

- (r) 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;
  - (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
  - (t) 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**”).
  - (u) any reference to build shall mean construct or develop and vice-versa unless the context otherwise requires
  - (v) any reference to Operate/Operations shall mean Operate and Operations & Maintenance 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 and in two copies, and if the Authority and/or the person appointed by the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.
- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

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

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

### **1.4. Priority of Agreements and Errors/Discrepancies**

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

- (a) this Agreement;

(b) RFP Document

(c) all other agreements, minutes of the meetings and documents forming part hereof;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) and (c) above and (b) shall prevail over all documents in (c) above.

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail; and

(c) between any value written in numerals and that in words, the latter shall prevail.

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## 2. Scope of the Project

- 2.1.1. The Operator shall operate, maintain and manage the Project Facility in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits. The Project Facility shall be handed over by the Operator to the Authority at the end of the Agreement Period or upon the premature termination of this Agreement for any reason, in good and running condition.
- 2.1.2. While undertaking operation, maintenance and management of the Project, the Operator shall adhere to standards and specifications set forth in **Schedule D** of this Agreement, statutory requirements, and any other norms including Industry Good Practice, as applicable from time to time.
- 2.1.3. The Operator shall, operate, maintain, manage and transfer the Project Facility throughout the Agreement Period in accordance with the applicable regulations of the concerned authorities, as the case may be and the provisions of this Agreement and the Schedules hereof.
- 2.1.4. The Operator shall make Project Facility operational by operating itself or by entering into Third Party Agreements with other Persons for operations as per the Clause 3.4.
- 2.1.5. The Operator shall perform and fulfill all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.
- 2.1.6. The Operator shall be responsible for obtaining all the clearances, approvals and permissions etc as may be required for the implementation and execution of the Project.

Provided however, the Operator shall not be entitled to make any structural changes, alterations or improvements, whether permanent in nature or otherwise, without the prior written approval of the Authority.

### 3. Concession

#### 3.1 Grant of Concession

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Operator and the Operator hereby accepts the Concession for a period of 10 (ten) years commencing from the Effective Date (the “**Agreement Period**”), including the exclusive right, authority and authorisation during the subsistence of this Agreement, including extension thereof, to plan, operate, allocate, maintain and manage the Project Facilities and enjoy its commercial benefits for the Agreement Period. The aforesaid Agreement Period may be extended further for a period of 5 (five) years at the sole discretion of the Authority in the event the performance of the Operator is satisfactory and he is not in default or breach of any provisions of this Agreement.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Operator, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
- (a) To operate, maintain and regulate the use by Third Parties of the Project Facility;
  - (b) To have access to the Project Facility for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (c) To have access and liberty to plan, upgrade, maintain and operate the proposed Project Facility with the associated facilities and services during the Agreement Period in accordance with the provisions of this Agreement. Authority on its part, as part of this Agreement, provides to the Operator, an exclusive license to operate and maintain the Project Facility during the currency of this Agreement as per the terms and conditions contained herein;
  - (d) Exclusive right and authority, during the Agreement Period, to carry out the specified activities in relation to the Facility;
  - (e) To determine, demand, levy, collect, enforce, retain and appropriate revenue such as User Charges from users of the Project Facility each year starting from the Effective Date. The User Charges with respect to the services provided in Project Facility shall be determined at the sole discretion of the Operator, except for the User Charges with respect to the parking;
  - (f) To manage and operate all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Agreement and/or the mutually agreed terms provided by way of directions from the Authority;
  - (g) To fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Operator of its obligations as set out in this Agreement; and

- (h) To exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for managing, operating, and maintaining the Project.
- 3.1.3. The Operator shall not be entitled to allow the use of the Project Facility/ies by any other person or for any purpose other than to operate and maintain the Project Facility as specified in Clause 11.2. The Operator shall not carry out the Prohibited Activities as mentioned in **Schedule – C**.
- 3.1.4. The Operator has to take necessary approvals/ permissions/ clearances from the Competent Authority for activities to be undertaken in the Project Facility and the Authority shall in no way be liable for the same. Nevertheless the Authority without any binding obligation shall provide any assistance upon written request from the Operator.
- 3.1.5. Nothing contained herein, including the act of granting concession and permission to operate the Project Facility at the designated location shall vest or create any proprietary interest in the Project Facility or any part thereof including 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 in any manner. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.
- 3.1.6. It is hereby made clear that in the event of Termination of this Agreement, the Agreement Period shall mean and be limited to the period commencing from the Effective Date and ending with the Transfer Date.

## **3.2 Acceptance by the Operator**

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

## **3.3 Actions in Support of the Operator**

- 3.3.1. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.
- 3.3.2. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement.
- 3.3.3. The Authority shall provide assistance and recommendations to the Competent Authorities, including GoI, in support of the Operator's applications for Applicable Permits/ clearances/ permissions/ approval that may be needed from time to time for the implementation of the Project; provided that the Operator has made the requisite applications and is in compliance with the necessary conditions at its cost for the grant of such Applicable Permits, clearances etc.

### **3.4. Licensing the Use of the Project Facility or any Part Thereof**

- 3.4.1. The Operator shall have the right to sub-license built up space for setting up of shops, hyper-marts, offices, etc. within the Project Facility from the Effective Date. Provided however, it shall be obligatory upon the Operator to seek prior written approval of the Authority before entering into any such sub-license deed arrangements. Such sub-license deeds shall be a tripartite arrangement entered into between the Operator, the Authority and the third party(ies). Each such sub-license deed shall, incorporate clauses, that (i) the sub-license deeds shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre-mature, as the case may be); in no event the term of such sub-license(s) shall extend beyond the Agreement Period. The project Facility shall be handed over free of such sub-licensees; and (ii) the terms of such sub-license(s) shall not be contrary to or in derogation of the terms of this Agreement. Further, the role of the Authority shall be limited to monitoring and safeguarding its own and State Government's interests.
- 3.4.2. The Operator shall ensure to get the format of sub-license deed/ third party agreements approved by the Authority prior to its execution and also, submit the copy of the executed and signed sub-license deed(s) to the Authority for its records. The sub-licensee/s shall pay the license fees etc. under the sub-license deeds directly to the Operator.
- 3.4.3. The Authority hereby warrants that the Project Site together with the necessary right of way/ way-leaves is under the possession of and is vested in the Authority and has full powers to license it to the Operator for implementation of the Project in terms hereof.

### **3.5 Right of First Refusal**

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

## 4. Consideration of the Contract

### 4.1. Annual Concession Fee

- 4.1.1. In consideration of the rights, privileges and interests granted by the Authority to the Operator in terms of this Agreement, starting from the Effective Date, the Operator shall pay to the Authority an amount of Rs \_\_\_\_\_ (Rupees \_\_\_\_\_)<sup>4</sup> per annum as fee (the “**Annual Concession Fee**”). The Annual Concession Fee shall escalate at the rate of 10% (ten percent) over the previous value (of applicable Concession Fee) after every 3 (three) years. The first such increase shall take place on the third anniversary of the Effective Date and thereafter every subsequent increase shall take place on the same date at the end of each set of three years.
- 4.1.2. Annual Concession Fee shall become payable with effect from the Effective Date and shall be paid on quarterly basis during the Agreement Period. The Operator shall regularly make quarterly payments of Annual Concession Fee to the Authority at the beginning of every quarter (i.e. each block of 3 months), not later than 7 (seven) days after the commencement of a quarter. However, the first quarterly installment of Annual Concession Fee shall be made on the date falling immediately after 1 (one) month from the Effective Date on a pro rata basis for the balance 2 months of the first quarter. The payment of Annual Concession Fee shall be made into the Authority’s Designated Bank Account. All taxes (including GST), levies and charges as applicable and payable by the Authority to GoI or to any other government instrumentality with respect to the collection of the Annual Concession Fee shall have to be paid by the Operator along with and in addition to the payment of Annual Concession Fee. For the avoidance of doubt, it is clarified that the Authority shall be entitled to receive Annual Concession Fee as well as all applicable taxes from the Operator, whether payable by the Authority or the Operator.
- 4.1.3 Each quarterly installment of the Concession Fee shall be deposited by the Operator directly into Authority’s Designated Bank Account by way of online transfer of funds (as per the particulars thereof to be intimated by the Authority).
- 4.1.4 In the event of delay up to four weeks in payment by the Operator, the Operator shall be required to pay to the Authority, interest at the rate equal to SBI Base Rate + 2% (two percent) per annum. In the case of delay beyond such four weeks, it shall be considered as an Operator’s Event of Default.

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<sup>4</sup> To enter the amount specified in the Letter of Award

## **5. Conditions Precedent to the Agreement**

### **5.1 Conditions Precedent**

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

### **5.2 Conditions Precedent of the Authority**

- 5.2.1. The Operator may, upon signing of the Agreement, by notice require the Authority to satisfy the Conditions Precedent as set forth in this Clause 5.2 within a period of 30 (thirty) days from the Agreement Date, and the obligations of the Authority hereunder shall be deemed to have been performed when the Authority shall have provided to the Operator the Right of Way to the Project Facility, as demarcated under Schedule A, in accordance with the provisions of Clause 10.1.

### **5.3 Conditions Precedent of Operator**

- 5.3.1. The Conditions Precedent required to be satisfied by the Operator within a period of 30 (thirty) days from the Agreement Date prior to the Effective 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 and procured all necessary / mandatory clearances, permits, and approvals etc., which are required for the execution/ operation of the Project, so that all such conditional and/or unconditional clearances, permits, and approvals etc., are on full force and effect, throughout the Agreement Period;
  - (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.

### **5.4 Obligations to satisfy Condition Precedents**

- 5.4.1. Upon satisfaction of the Conditions Precedent by each Party, the other Party shall forthwith issue a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).

### **5.5 Non-Fulfillment of the Conditions Precedent**

- 5.5.1. In the event of the Agreement not coming into effect on account of the Authority not fulfilling the Conditions Precedent then the Earnest Money Deposit, the Performance Security and the Annual Concession Fee shall be returned to the Operator without any interest thereon.

5.5.2. Notwithstanding anything contained in this Clause, the Parties may mutually decide to extend the time period for the fulfilment of the Conditions Precedent.

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## **6. Obligations of the Operator**

### **6.1. Obligations of the Operator**

- 6.1.1. Subject to and on the terms and conditions of this Agreement, the Operator shall, at its cost and expense, undertake the Project in accordance with the Scope of Work as mentioned in Article 2 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 bye-laws, rules and regulations of the Authority, any directions of the NGT or Court of law, in the performance of its obligations under this Agreement.
- 6.1.3. Without prejudice to the generality of Clauses 6.1.1 and 6.1.2 above, the Operator shall discharge its obligations in compliance with the National Building Code, development control Rules, statutory requirements, any other norms and the principles of Good Industry Practice, which are applicable from time to time.
- 6.1.4. The Operator shall take prior approval of the Authority in case if any major maintenance, repairs, alteration or change or improvement in the Project Facility including the existing facilities as specified in Schedule A is proposed/ required to be made by the Operator under the Project during the Agreement Period. However, in case of any minor maintenance works/ repairs, the Operator shall carry out the same with prior intimation to the Authority.
- 6.1.5. The Operator shall take approval from the Authority prior to the finalisation of the name of the Project. Unless the name negatively affect public sensitivities, the Authority shall not unreasonably withhold approval of the name proposed by the Operator.
- 6.1.6. The Operator shall ensure that there is no adverse impact to the environment, flora and fauna & ecology of the area on account of carrying out of activities at the Project Facility. The garbage & sewer shall be disposed off in an environment friendly manner in accordance with Applicable Law, Applicable Permits and guidelines issued by any government agency of GOI or GoHP or the NGT or the Court of Law.
- 6.1.7. Without prejudice to Clauses 6.1.1 and 6.1.2 above, 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, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into operations of the Project;
  - (c) not to damage any other infrastructure or any other utility developed by the Authority and handed over or in respect of which right to use or access is provided to the Operator or any other utilities developed and maintained by any other authority or person and in case



of any such damage to undertake the repair and also to pay for any losses that is incurred by the Authority or any authority or any other person, as the case may be;

- (d) not make any changes in the structure, facade of the Project Facility while undertaking operation and maintenance Works. The Operator shall have the option to make changes within four walls of the existing structures/ floors with pre-fabricated materials, while maintaining the aesthetics of the Project Facility, after taking prior written permission from the Authority. Provided however, the Operator shall be allowed to convert the existing unfinished hall area on the top floor of the Project Facility into rooms with toilets (not exceeding 5 in number) after taking prior written permission from the Authority;
- (e) ensure and procure that the Operator and its sub-contractor(s), agents, employees and personnel shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any encumbrances, adverse rights or third party rights on the Project Site and also to ensure that Government of Himachal Pradesh /Authority are not adversely affected in any way;
- (h) shall make payments including payment of Annual Concession Fee to the Authority in a timely manner as per provisions of this Agreement;
- (i) provide all assistance to the Nodal Officer as may be require for the performance of its duties and services;
- (j) ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the premises. The Operator shall be liable or responsible for destruction or damage to the premises;
- (k) charge parking fee at the rates determined by the Authority from time to time;
- (l) ensure only commercial gas cylinders are used for the operations at the Project Facility;
- (m) ensure that any minor repair is carried out at the Project Facility only with prior intimation to the Authority; in case of any major repair or alteration or improvement, the prior written approval of Authority is mandatory;
- (n) procure at its own costs, expenses and risk all the services necessary for the operations of the Project Facility including without limitation electricity, water, materials, sewerage, power, telephone, sanitation, garbage disposal and other applicable utility expenses, charges/ rates, including penalties for default in payment, in relation to the use thereof, in the operation 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;

- (o) ensure that all the furniture, fixtures, equipment etc, to be made part of the Project Facility shall be of highest standards and quality as per Good Industry Practice and acceptable to the Authority;
- (p) ensure that all the fixtures, furniture and equipment shall be maintained in a proper manner and if any fixture, equipment or furniture is found in depleted condition then the same shall be replaced by the Operator at his own cost. Nodal Officer at any time, may instruct the Operator to replace / repair the fixtures, equipment, furniture or any other moveable or immovable assets, if the same are found to be in a poor or depleted condition. The Operator shall only use pre-fabricated walls & doors for partitioning etc., within the Project Facility and not undertake construction of any permanent walls, etc.;
- (q) shall bear the cost/ expenditure to be incurred on the commercial operation of the Project Facility during the entire Agreement Period. The Operator shall be responsible for the expenses on account of operation and maintenance of ramps leading to the parking floors including the electricity charges for lifts and lighting of the ramp installed at the Project Facility and seek reimbursement of 50% of such charges incurred from the occupants on Floor 1 to Floor 5;
- (r) shall have the right to erect electronic hoardings and advertisement boards, as per the applicable laws after prior approval from Authority, in the Project Facility except the top floor, and generate revenue from it;
- (t) provide adequate security, watch and ward service at the Project Facility to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (u) be responsible for all liabilities arising out of operation, maintenance & management of the Project. The Operator shall plan, organize and execute the works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighboring facilities. The Authority shall assist the Operator in all respects with reference to such works, but the assistance or denial thereof shall not release the Operator from its obligations and the Authority shall not be deemed to undertake any such obligation at its own;
- (v) to ensure that no structural damages/ changes are caused to the existing structures at the Project Facility as a result of Operator's activities, etc.; However, the Operator shall be entitled to carry out necessary repairs and / or renovations to the existing structure in the Project Facility with prior written approval of the Authority, at its own costs and expenditures without having any claim against the Authority
- (w) shall have the option to advertise the Project in newspapers or through any other mode of communication at own cost;
- (x) shall in consultation with the Nodal Officer/ Authority prepare and evolve, not later than 10 (ten) days prior to the effective date, a draft Operation and Maintenance Manual ("**O&M Manual**") providing the detailed plan for the regular and preventive maintenance of the Project keeping in view the specific requirements of the Project Facility, Good Industry Practice, Applicable Laws, Applicable Permits and the Operation

& Maintenance Requirements as set forth in **Schedule-D**. The Operator shall at its cost, provide within 10 (ten) days of its finalization, submit the draft of the O&M Manual to the Authority for its review. The O&M Manual will become final only after it has received the final approval of the Authority. Within a period of 15 (fifteen) days from the date of receipt of the O&M Manual, the Authority shall revert to the Operator with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of the Authority. The Authority shall approve the re-submitted O&M Manual no later than 10 (ten) days of its submission. If the Authority fails to give any comments on the draft O&M Manual and/or the re-submitted O&M Manual within the time periods as specified above, it shall be deemed that the Authority has no comments or observations and the Operator can proceed in accordance with the O&M Manual as finalized by the Operator at its own risk and cost. The O&M Manual shall include all the activities required for regular and periodic maintenance of the Facility during the Operations Period, so that Project Facility is maintained at all times in a manner that it complies with the provisions of the Agreement in sound, durable and functional condition. The O&M Manual of the Project Facility shall also include service level specifications, performance standards for maintenance, service level indicators, their response/ repair time, frequency of monitoring and the key performance indicators;

- (y) be solely and exclusively responsible for the recruitment, transportation, accommodation, payment of the salaries, wages, allowances and other payments to its employees and cost incidental thereto and all taxes, charges, levies, duties payable under the Applicable Laws arising from the respective terms and conditions of employment of its personnel deployed on the Project Facility under or through whatever legal relationship. The Operator shall be further responsible for obtaining all necessary clearance from the Competent Authorities and compliance with all local and other Applicable Laws and regulations pertaining to the employment of labour. The Operator shall ensure that all labour laws, rules and regulations are followed and that the Operator shall be the primary employer of the staff, personnel, labour employed by it or by its Sub-Contractor(s) on the Project Facility without any liability of the Authority; and
- (z) hand over the Project Facility in operational and good condition on the date of termination of Concession to the Authority, in accordance with the provisions thereof.

## **6.2. Obligations relating to Other Agreements**

- 6.2.1. It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Operator from its obligations or liability hereunder.
- 6.2.2. The Operator may undertake operation of the Project Facility by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Operator shall remain solely and fully responsible to meet the scope of work as mentioned under Clause 2.1.
- 6.2.3. The Operator shall submit to Authority the drafts of all Third Party Agreements or any amendments or replacements thereto for its review and comments, and Authority shall have the

right but not the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Third Party Agreement or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

### **6.3. Access for Supervision**

6.3.1 The Operator shall, at all reasonable times and on reasonable notice, afford access to the Project Facility following grant of possession thereof to the Nodal Officer, representative(s) of or any other Person(s) duly authorized by the Authority and/ or the competent authority concerned with safety, security or environmental protection to inspect the Project Facility thereon and to investigate any other matter within its authority and the Operator shall further afford reasonable access to the Project Facility to such Persons/ Nodal Officer/ representative(s) of the Authority and the competent authority, necessary to carry out their respective duties and functions.

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

### **6.4. Obligations relating to Environmental Measures**

6.4.1. The Operator shall take all reasonable steps to protect the environment (both on and off the Project Facility) and to limit damage and nuisance to people and property in the vicinity. The Operator shall dispose off the waste/ garbage as per Applicable Laws and ensure that the Users do not litter in and around the Project Facility.

6.4.2. The Operator shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, including its officers, employees and agents from and against any and all demands, claims, damages, penalties, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Operator to discharge its obligations under this Article inter alias, and to comply with the provisions of health, safety and environmental laws as applicable;

### **6.5. Obligations relating to clearance of Project Facility**

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

## **6.6. Safety and Security**

- 6.6.1. The Operator shall comply with all safety regulations applicable, access arrangements and operations on the Facility. The Operator shall be responsible in the operations and any other work, to take all precautions to ensure safety of the staff, laborers and public.
- 6.6.2. The Operator shall be responsible at its cost, safety and security of all the Project Assets, both movable and immovable at the Project Facility by deploying adequate security staff round the clock, CCTV cameras at appropriate locations on all the floors, etc. Unless otherwise stated in this Agreement:
- i. The Operator shall be responsible for keeping unauthorized persons off the Project Facility and preventing encroachment on the Project Facility during the Agreement Period.
  - ii. Authorised Persons shall be limited to the employees of the Operator, Nodal Officer and persons authorised by the Authority.
- 6.6.3. In the event of an accident, the Operator shall, by most expeditious means, inform the concerned Civil and Police Authorities, and also the Authority. The Operator's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Facility of such accident intact, until completion of all legal formalities. The Operator shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Facility. If any portion of the Project Facility suffers any damage, the Operator shall, with the consent of the Authority, arrange for the repair and rectification thereof.
- 6.6.4. The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- 6.6.5. Any communication to the media made by the Operator shall provide only such enough information as to satisfy the public concern and the Operator shall make no admissions nor accept any liability in such communications, without consulting the Authority.
- 6.6.6. The Operator shall indemnify, defend and hold harmless the Authority, during the term of this Agreement, from and against all liabilities, costs, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Operator due to such any accidents.

## **6.7. Insurance Requirement**

The Operator shall, at its own cost and expense, purchase and maintain insurances as are prudent, including but not limited to the coverage of following:

- a) Builder's all risk insurance;
- b) Loss, damage or destruction of the Project Facility at the replacement value;

- c) Comprehensive third party liability insurance including injury or death to the persons who may enter the Project Site by accident or otherwise;
- d) Workmen's compensation insurance; and
- e) Any other insurance that may be necessary to protect the Operator, its employees and its assets and the Authority, its employees and agents engaged in or connected to the Project and the Project Site including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

## **6.8. Compensation**

The Operator shall be solely responsible for compliance with all applicable labour laws, Payment of Wages Act, Employees Provident Fund act, Workmen Compensation Act, Works Contract Act, Minimum Wages Act, Industrial Dispute Act, Contract Labour (Regulation and Abolition) Act and other relevant central / State Government Rules etc.

## **6.9. Stipulated Usage Plan for different floors at the Project Facility**

The Operator while preparing the Plan for the Project Facility in terms of Clause 11.1, should not deviate from the detailed stipulated floor plan in Schedule -A.

## **6.10 Pick-up and Drop Facility to the Tourists**

- 6.10.1 The Operator shall provide drop and pick up facility to the Tourists parking their vehicles at the car parking area of the Project Facility. Such service shall be provided free of cost to the Tourists/ Users and the area of service shall be limited to the nearest motorable point within the municipal limits of the Authority.
- 6.10.2 For facilitating the ferrying of the Tourists parking their vehicles at the car parking area of the Project Facility, the Operator at its cost may either procure and deploy its own vehicles or the Operator may tie up with local taxi operators for providing pick-up and drop facility to the Tourists parking their vehicles at the car parking area of the Project Facility, to the nearest motorable point within the municipal limits of the Authority.

## **7. Obligations of the Authority**

### **7.1. Obligations of the Authority**

- 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) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
  - (b) 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;
  - (c) extend the assistance of its good offices on a reasonable effort basis to assist the Operator in the provision of electricity and water;
  - (d) 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;
  - (e) 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 Agreement Period. If some specified time period has been allocated to the Authority for giving any decision then such decision should be provided within such specified time limit and where no time limit has been specified then within a period no longer than 15 (fifteen) days;
  - (f) shall ensure that the Government offices located on Floor No. 1 to Floor No. 5 at the Tutikandi Parking cum Commercial Complex pay for power and water charges without any liability falling on the Operator. Further, the Operator shall have no liability towards maintenance of these floors in any manner whatsoever;
  - (g) ensure that the occupants of the Government offices on Floor No. 1 to Floor No. 5 pay the expenses on account of operation and maintenance of ramps leading to the parking floors including the electricity charges for lifts and lighting of the ramp also used by the staff/ visitors of such Government offices in equal share with the Operator, within a period of 15 days from the date of the demand being raised by the Operator;
  - (h) respond to the written intimation by the Operator for undertaking minor changes and for seeking permission for carrying out major repairs/ maintenance works/ improvements, etc. within a period no later than 10 (ten) days from receipt of such written request from the Operator; however, in the case of emergency and urgent repairs, the Authority should

revert within shortest possible time so that the Project Facility or any part thereof and the Users are not subject to any risk due to any delay in permission;

- (i) shall prescribe standards including additional standards for operation, maintenance and management of the Project Facility as and when required and decided upon;
- (j) 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;
- (k) appoint Nodal Officer and 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 operation and maintenance of the Project by the Operator; and
- (l) support, cooperate with and facilitate and guide the Operator in the implementation of the Project in accordance with its objective.

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## **8. Representations and Warranties**

### **8.1. Representations and Warranties of the Operator**

The Operator represents and warrants to the Authority that:

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

aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) no order has been made and no resolution has been passed for the winding up of the Operator or for a provisional liquidator to be appointed in respect of the Operator and no petition has been presented and no meeting has been convened for the purpose of winding up the Operator. No receiver has been appointed in respect of the Operator or all or any of its assets. The Operator is not insolvent or unable to pay its debts as they fall due.
- (l) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (m) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.; and
- (n) 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.

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## **9. Performance Security**

### **9.1. Performance Security**

- 9.1.1 The Operator shall submit to the Authority, for the due and punctual performance of its obligations hereunder during the Operation Period, to the Authority, within 21 (twenty one) days of the date of NOA, a Performance Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only), which shall be equivalent to higher of : (i) 6 (six) month's Annual Concession Fee (as quoted by the Successful Bidder in its Financial Proposal dated \_\_\_\_\_ and accepted by the Authority) or (ii) 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; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule B of this Agreement.
- 9.1.2 The Performance Security shall be kept valid and in force for the entire duration of the Agreement Period, through periodical renewals, at least 1 (one) month prior to the expiry of the subsisting Performance Security. In the event the Operator fails to provide the renewed/ extended performance security at least 1 (one) month prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Operator to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Operator Event of default in terms hereof. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne by and paid by the Operator.

### **9.2. Appropriation of Performance Security**

- 9.2.1. In the event, the Operator is in default or breach of the due, faithful and punctual performance of its obligations or failure to meet conditions precedent under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Authority for or against the Operator under this Agreement or against the Authority in respect of 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 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.

Provided that if the Agreement is terminated due to any event other than aOperator Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Authority's right to receive amounts, if any, due from the Operator under this Agreement, be duly discharged and released to the Operator.

### **9.3. Release of Performance Security**

The Performance Security Bank Guarantee (if subsisting) shall be released to the Operator 60 (sixty) days after end of Agreement Period. Provided however, the Authority shall be entitled to recover any amounts due or receivable from the Operator under this Agreement, before the Performance Security is duly discharged and released to the Operator.

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## **10. Access to the Project Facility**

### **10.1. Access**

- 10.1.1. The Authority hereby grants to the Operator access to the Project Facility for carrying out any investigations and tests that the Operator may deem necessary during the Agreement Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of investigations and tests carried out or work undertaken by the Operator on or about the Project Facility pursuant hereto in the event of Termination or otherwise.
- 10.1.2. In consideration of the Annual Concession Fee, this Agreement and the covenants and warranties on the part of the Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from the Effective Date, leave and license rights in respect of all the existing structure (along with any buildings, constructions or immovable assets, if any, thereon) comprising the premises of Project Facility which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "*as is where is*" basis, 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 Agreement Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.1.3. 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.
- 10.1.4. It is expressly agreed that mining rights of any kind do not form part of the rights granted to the Operator under this Agreement and the Operator hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

### **10.2. Others**

#### **10.2.1. Shared Access**

The Operator shall enjoy access to the Project Facility throughout the Agreement Period for carrying out its obligations under this Agreement. However, such access shall not be exclusive and shall be shared with the Authority, which is in lawful ownership/possession of the Licensed Premises. The Operator shall be the sole authority for regulating access to the Project Facility. However, access to the Project Facility shall be available, at all times during the Agreement Period, to the Authority, Nodal Officer or any other person appointed by the Authority for the purpose of inspection, viewing and exercising the rights of the Authority as set forth in this Agreement.

#### **10.2.2. Special/Temporary right of way**

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

### 10.2.3. Display of Authority logo

Notwithstanding any statement to the contrary contained herein, the Authority reserves the right to prominently display the Authority logo in the Project Facility area as deemed appropriate by the Authority. The cost of installation, operation and maintenance of such logo/sign shall be borne by the Operator for the entire Agreement Period.

### 10.2.4. Parking Charges

Users of Project Facility shall be allowed to use the parking space available on different floors in the Project Facility only for the purpose of parking of vehicles and for no other purpose. The parking shall be on a chargeable basis and such charges will be collected and appropriated by the Operator as per the charges notified by the Authority from time to time. The charges will be subject to capping as per below mentioned rates:

Time Limits	Up to 5 seats	Above 5 seats
0 hrs. to 4 hrs.		
4 hrs. to 8 hrs.		
8 hrs. to 12 hrs.		
12 hrs. to 24 hrs.		
for every next 24 hrs or part thereof		

Revision in capping charges will be allowed in every 2 (two) year at the rate of 10%.

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## 11. Project Implementation

### 11.1. Obligations prior to the commencement of any work

Prior to commencement of the operation, the Operator shall:

- (a) submit the Operation, Maintenance and Management Plan (the “**Plan**”) to the Authority, including details of all works to be undertaken by Operator within Agreement Period to the Authority for approval within 15 (fifteen) days of the date of execution of this Agreement. Any delay in submission of Plan, beyond the above mentioned period, shall entail a penalty of 0.1% (zero point one percent) of Performance Security per day. The Plan shall include the details of the activities which the Operator intends to carry out at the Commercial Area. If Authority objects to the activities proposed in the Plan, the Operator shall be liable to change the activities proposed and suggest different set of activity, which shall again be subject to the approval of the Authority. The Plan shall also include advertising plan in the Project Facility by the Operator, in terms of number of such points of advertisement, medium of advertisement (such as boards, posters etc.), specifications, dimensions etc. the Authority shall have the right to seek amendments in the advertising plan, which shall have to be accepted by the Operator.
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;
- (d) Undertake operation and maintenance of the Project Facility in accordance with the O&M Manual prepared in accordance with Clause 6.1.6 (x) and the Operation & Maintenance Requirements as set forth in **Schedule-D**;
- (e) undertake any minor repair only with prior intimation to the Authority and major repairs/ maintenance/ improvements only with prior written approval of the Authority which the Authority may at its discretion disallow if the same would result in compromising the original theme, objective (of the State Government) and aesthetics of the Project Facility; and
- (f) procure all such approvals/consents/permits as necessary as per applicable laws, including structural design approval from the Authority.

### 11.2. Project Operation

11.2.1. The Operator shall operate and maintain the Project Facility during the Agreement Period and adhere to the O&M Manual, Operation and Maintenance Requirements as mentioned in Schedule D, Applicable Laws, Applicable Permits and the provisions of this Agreement. If the Authority finds Operator is failing to meet any of the aforesaid requirements, then the Authority shall give a notice to Operator stating the fault (the “**Fault**”) and grant 5 (five) days to rectify the same. If the Authority finds the Fault has not been rectified within the time period specified, then the Authority shall have the right to rectify the Fault and recover the expenses for the same from Operator. In such case, the Authority shall have the right to encash Performance Security to the extent of expenses incurred in rectification of the Fault.



- 11.2.2. The Operator shall be required to apply for and obtain clearances as applicable for holding any event in the Project Facility, including but not limited to permissions from local bodies, police, traffic, fire etc.
- 11.2.3. Repair and maintenance of any kind in the Project Facility shall be the responsibility of Operator. However, Operator shall be required to take prior approval of the Authority before undertaking any major maintenance or repair or improvement in the Project Facility. Any minor repairs shall be undertaken only with prior intimation to the Authority.
- 11.2.4. The Operator shall also maintain the items mentioned under Schedule E in operational state. Any repair, maintenance and replacement of items (with same or equivalent make and specifications) will be the responsibility of the Operator. Operator shall have to take prior approval of the Authority before making any replacements of items stated in Schedule E to this Agreement.
- 11.2.5. The Operator shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Project Facility. The Operator shall ensure that the beddings in the dormitories are always kept clean and fresh. The Operator shall also ensure that the toilets on all the floors are kept clean with adequate availability of water always.
- 11.2.6. The Operator shall ensure that operation of Project Facility does not disturb the operation of other activities in the vicinity of the Project premises.
- 11.2.7. The Operator shall not damage or alter the existing structures of Project Facility.
- 11.2.8. The Operator recognises and acknowledges the fact that the Project is intended to provide a public facility and the Operator shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this Agreement and in the public interest. Under exceptional circumstances, if the Operator apprehends any detriment to the Project Facility, it shall seek instructions from the Authority, whose decision in this regard shall be final.
- 11.2.9. The opening and closing hours of the Project Facility shall have to comply with the rules set by the local administration/the Authority. The Operator shall make best efforts to ensure that maximum people particularly the tourists visiting Shimla park their vehicles at the Project Facility.
- 11.2.10. The activities as mentioned in Schedule C shall be strictly prohibited in the Project Facility.

### **11.3. Nodal Officer**

#### **11.3.1. Nomination**

11.3.1.1. The Authority shall nominate one of its officers to act as the Nodal Officer at least 7 (seven) days prior to the Effective Date. The Nodal Officer shall act as the representative of the Authority in respect of the Project.

11.3.1.2 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.

#### **11.3.2. Tenure**

11.3.2.1. The tenure of Nodal Officer shall commence from the date of nomination thereof and shall continue until the end of the Agreement Period/this Agreement by efflux of time or prior termination, as the case may be.

### 11.3.3. Roles and Responsibilities

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

- i) The Nodal Officer shall oversee and monitor the Operation, Maintenance and Management of the Project Facility in accordance with the provisions of this Agreement and call for information and explanation, in case of deviation, if any;
- ii) The Nodal Officer shall ensure that the Operator is adhering to the minimum standards prescribed in the Agreement and the related Schedules and also complying with the directions, decisions and standards prescribed by the Authority from time to time;
- iii) The Nodal Officer shall review the curing of defects and defaults in the operation and maintenance of the Project/Project Facility;
- iv) The Nodal Officer shall use best endeavors to assist in resolving, without being liable in any manner, operational issues and disputes between the Operator and the Users of the Project Facility;
- v) The Nodal Officer shall review the safety and security of the operations and maintenance activities relating to the Project;
- vi) The Nodal Officer shall report to the Authority regularly on monthly basis any cases of faults, defaults, defects in operation, fraud investigated or grievances received against the Operator and thereafter ensure that the Operator complies with the remedial measures suggested by the Authority;
- vii) The Nodal Officer shall monitor the redressal of complaints and grievances from the Users related to the Project Facility and duly report the same to the Authority; or
- viii) Any other duty which is considered in the overall interest of the Project as per the directions of the Authority.

11.3.4. Nodal Officer shall visit the Project Facility at least once a month or earlier as may be required.

11.3.5. The Operator shall extend full co-operation to the Nodal Officer in performing its functions.

11.3.6. Any failure on the part of the Nodal Officer in respect of its functioning shall not (1) amount to any consent or approval or waiver of the activities of the Operator; and (2) release or discharge of the Operator of its obligation in part or full, to carry out the operation and maintenance of the Project Facility in orderly manner.

11.3.7. If at any time during the performance of this Agreement, the Operator or its employees are found to be guilty of misbehavior/misconduct/ mishandling with any member of public visiting the Premises or any authorized representative from the Authority, or is found to be incompetent or negligent in performing his/their duties or if in the opinion of the Authority, it is undesirable for such persons to be employed by the Operator in the work at Premises, the Operator, if so directed by the Authority or his authorized representative shall forthwith

remove such persons(s) from the work at the Project Facility and/or the Authority immediately. The Nodal Officer shall ensure strict compliance with such instructions of the Authority.

#### **11.4. Electricity and Water**

- 11.4.1. Existing arrangements of power and water supply at the Facility shall be continued to be available to the Operator.
- 11.4.2. The Operator shall be required to pay to concerned department, the cost or charges for the units consumed in Project Facility, as measured by the meter. The cost or charges per unit of electricity shall be as applicable and/ or the prevalent rate per unit. Operator shall be required to pay for electricity as and when the bill is received by the concerned Department/ authority or whenever it is due.
- 11.4.3 The Operator shall ensure timely payment of bills related to electricity, water, taxes and other bills. In the event of default committed by the Operator in making payment of any such bills and as a result some penalty or penal interest is levied or charged by the concerned authority/ department, the Operator shall be liable to bear the same without any responsibility of the Authority.
- 11.4.4. The Operator at present has a three phase electricity connection with \_\_\_\_\_ Ampere current. The Operator shall be allowed to set up and use silent generators to meet any additional requirement of electricity in the Project Facility beyond the capacity that is provided by the Authority.
- 11.4.5 The Operator shall not be responsible for bearing power and water charges in respect of consumption by the Government offices located on Floor No. 1 to Floor No. 5 at the Tutikandi Parking cum Commercial Complex which shall be borne by the State Government only. However, the cost on account of operation and maintenance of ramps leading to the parking floors including the electricity charges for lifts and lighting of the ramp shall be shared equally between the Operator and the State Government offices at the Project Facility.
- 11.4.6 The Operator shall not be responsible for bearing power and water charges in respect of consumption by the Government offices located on Floor No. 1 to Floor No. 4 and parking at Floor No. 5, at the Tutikandi Parking cum Commercial Complex which shall be borne by the State Government only.

## **12. Accounts and Audit**

### **12.1. Accounts and Audit**

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

### **12.2. Appointment of auditors**

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

### **12.3. Certification of claims by Auditors**

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective, only if certified by its Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business between the parties.

## **12.4. Dispute Resolution**

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

## **12.5. Books and Records**

The Operator shall, at its own cost:

- i. Maintain and submit on a monthly basis, the record of days of operation for each component of commercial area, during that month;
- ii. Prepare and maintain, on generally accepted Indian accounting principles, proper, accurate and complete books and records and accounts of all transactions related to the Project;
- iii. Retain and store on the premises for the Agreement Period all records relating to the Project, which shall be the property of the Authority;
- iv. Provide support to the Authority to meet all the data requirements of all Competent Authority (/ies).

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## **13. Designated Bank Account**

### **13.1. Designated Bank Account**

- 13.1.1. The Operator shall, prior to the Effective Date, open and establish an account with a Nationalized/ Scheduled Bank located in Shimla into which all the inflows, receipts and revenues generated from the Project including User Charges, are collected and deposited by the Operator shall be credited by the Operator on a daily/ weekly/ monthly basis.
- 13.1.2. Irrespective of the inflow of revenues into the Designated Bank Account, the Operator shall continue to discharge its obligation in respect of payment of Annual Concession Fee to the Authority without any failure from any of its other sources.

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## 14. Force Majeure

### 14.1. Force Majeure

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

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

### 14.2. Force Majeure Events

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

- (a) Act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facility);
- (b) Strikes or boycotts (other than those involving the Operator, contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting services to the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) Any failure or delay of a contractor but only to the extent caused by another Force Majeure Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such contractor;
- (d) Any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (g) Industry-wide or State-wide strikes or industrial action for a continuous period of 48 (forty eight) hours and exceeding an aggregate period of 14 (fourteen) days in an Accounting Year;

- (h) Compulsory acquisition in national interest or expropriation of any Project Facility or rights of the Operator or of the contractors;
- (i) Unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Operator or any of the contractors to perform their respective obligations under this Agreement and the Third Party Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit; or
- (j) Any event or circumstances of a nature analogous to any of the foregoing;

### **14.3. Duty to Report Force Majeure Event**

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

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

### **14.4. Effect of Force Majeure Event**

Upon the occurrence of any Force Majeure Event the Agreement Period shall be extended by a period equal in length to the duration of the Force Majeure Event.

### **14.5. Allocation of Costs Arising out of Force Majeure**

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



#### **14.6. Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 13 and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### **14.7. Termination Payment for Force Majeure Event**

In case of Termination for Force Majeure Event, the provisions of Clause 15.3 and 15.4 shall be applicable. However, the Performance Security shall be returned to Operator.

#### **14.8. Dispute Resolution**

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

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## 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 happens to occur, and the Operator fails to cure the default within the Cure Period set forth below in respect of the said default, and where no Cure Period is specified, then within a Cure Period of 15 (fifteen) days, the Operator shall be deemed to be in default of this Agreement ( "**Operator's Default**" ), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure event. The defaults referred to herein shall include:

- (a) The Performance Security has been partially or fully invoked and appropriated by the Authority as per the 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 any installment of Annual Concession Fee, any default by the Operation in payment beyond 4 (four) weeks shall tantamount to Operator's Event of Default;
- (c) The Operator commits any particular/ similar fault for four times, in relation to any matter of the Project Facility, during the currency of the Agreement Period;
- (d) The Operator abandons or manifests intention to abandon the Project without prior written consent of the Authority;
- (e) The Operator has failed to make any payment towards damages to any user or any utility within the period specified in this Agreement;
- (f) The Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement or repudiation thereof;
- (g) Change in the management and/ or control of the Operator Company/ Society/ Partnership which according to the Authority may have Material Adverse Effect on the Project;
- (h) The Operator is adjudged bankrupt or insolvent and any Insolvency Professional is appointed by the National Company Law Tribunal ("NCLT"), or if a Trustee or Receiver is appointed for the Operator or for the whole or material part of its assets of the Operator at any time before the Effective Date;
- (i) 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;
- (l) 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;

- (m) The Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (n) The Operator commits a material default in complying with any other provision of this Agreement;
- (o) The Operator novates and /or assigns the agreement to any third party without any prior approval for the same from the Authority;
- (p) The Operator indulges in any sort of construction activity or major repair or alteration at the Project Facility or demolishes any structure at the Project Facility without any prior approval for the same from the Authority.

## **15.2. Procedure to issue Termination Notice**

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

## **15.3. Effect of Termination**

Upon Termination as per Clause 15.1 the Operator hereby acknowledges that no Termination Payment or any other compensation of any kind, shall be due or payable by the Authority. The Operator acknowledges that within 10 (ten) days of termination, the Operator shall vacate the Project Facility. The Operator acknowledges that once the agreement is terminated the Operator shall cease to have access to the Project Facility. No liability with respect to any of the assets of the Operator shall devolve on the Authority. No extra costs/ expenses/damages or any other payments shall be claimed by the Operator from the Authority.

## **15.4. Other Rights and Obligations of the Authority**

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

- (a) be deemed to have cancelled the Operator's access to the Project Facility and shall be deemed to have taken sole possession and control of the Project Facility till the date of termination;
- (b) take possession and control of all assets, materials, stores and implements on or about the Project;
- (c) be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Project Facility or any part of the Project;
- (d) invoke the Performance Security as part Damages, except when the Termination is due to Force Majeure event. In case termination is done by Authority not because of the default of the Operator, then in such condition the Authority will pay for all the financial losses incurred by the Operator and the quantum of the financial losses will be decided by the Arbitrator as per Clause 18.3.
- (e) Authority shall have at all times right to reject any third party which has been proposed in relation to the novation or assignment of this agreement

## 16. Divestment of Rights and Interest

### 16.1. Divestment Requirements

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

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver/surrender/ transfer and assign forthwith the actual or constructive possession of the Project Facility to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and encumbrances created or suffered by the Operator after the Effective Date. All of the Operator's right, title and interest in and to the Project Assets and the Project Facility shall determine and shall revert/ stand transferred in the name of the Authority;
- (c) cure all Project Assets, of all defects and deficiencies so that the Project Facility is compliant with the maintenance requirements;
- (d) ensure that personnel of the Operator deployed on the Project Facility shall continue to be the employees of the Operator and the transfer of the Project Assets and the Project Facility shall not in any manner affect their status as employees of the Operator and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency;
- (e) to the extent possible assign to the Authority or its nominated agency (only if so requested by the Authority) at the time of transfer all unexpired guarantees and warranties by suppliers and all insurance policies. 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) to the extent possible at the time of transfer assign to the Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Operator with third parties and subsisting at the time of transfer except contracts with employees;
- (g) the transfer of Project Facility shall be treated as a transfer on a going concern basis. The transfer of possession of immovable property comprising the Project shall be deemed to be a Termination of all contractual arrangements or licenses in relation to the Project Facility and all such immovable property shall automatically vest in the Authority or its nominated agency. The movable property comprising the Project Assets and the Project Facility shall be deemed to be transferred to the Authority or its nominated agency by constructive delivery and possession;
- (h) at the time of transfer of the Project Facility, the Project Facility shall be in running and operational condition as is reasonable in all the circumstances, taking into account their age, the design, materials used, and maintenance carried out;
- (i) until the date of transfer of Project Facility, 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 shall provide fair and just compensation to such employees as required under the Applicable Laws or under this Agreement, and shall indemnify the Authority against any and all claims such employees may make for loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Operator's employees, staff and labour;

- (j) the Operator shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the transfer of the Project Facility to Authority by the Operator;
- (k) on the date of the transfer of Project Facility, the declaration of license shall automatically terminate and the Operator, its subcontractors, agents, employees and licensees shall vacate the Project Facility and the leave the possession of the Project Assets;
- (l) from the date of transfer, the obligations and the rights of the Operator under this Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Project Facility and the Project Assets and their operation and maintenance and any other rights or obligations arising out of this Agreement which either expressly or implicitly survive Termination of this Agreement; provided, however, that the Operator may continue with any other business operations arising other than in connection with this Agreement and; provided further that the Operator shall no longer act in its capacity as Operator in relation or pursuant to this Agreement;
- (m) The Operator shall remove his own assets, stores and stocks only with the prior permission for the same by the Authority in writing in the form of a letter of Outward Gate Pass.

## **16.2. Vesting Certificate**

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

## **16.3. Divestment costs etc.**

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

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

16.3.3. In the event that any of the divestment requirements as set forth in Clause 16.1 are not fulfilled by the Operator within 15 (fifteen) days from the end of the Agreement Period, the Operator shall be required to pay to the Authority, a penalty equivalent to the multiple of the “Penal Interest Rate” applicable on the date of Termination for each day of delay in the fulfillment of the divestment requirements beyond the period of 15 (fifteen) days specified herein.

For the purpose of this Agreement, “Penal Interest Rate” shall mean the rate of interest that is two times of the rate of interest on the 10-year Government of India Security as on the date of Termination.

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## **17. Liability and Indemnity**

### **17.1. General indemnity**

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

### **17.2. Liability of the Authority**

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

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

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

### **17.3. Indemnity by the Operator**

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

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

**17.4. No consequential claims**

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

**17.5. Survival on Termination**

The provisions of this Article 17 shall survive the Termination.

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## **18. Dispute Resolution**

### **18.1. Dispute resolution**

- 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 Principal Secretary, Department of 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 Clause 18.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 18.3.

### **18.3. Arbitration**

- 18.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2 the parties shall submit such dispute for arbitration by the ‘Secretary (LAC), Govt. of Himachal Pradesh as the Sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.
- 18.3.2. The Sole Arbitrator shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Operator and the Authority agree and undertake to carry out such Award without delay.
- 18.3.3. The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- 18.3.4. This Agreement and the rights and obligations of the Parties shall remain in full force and effect including the obligation of the Operator to pay the Annual Concession Fee along with any applicable interest due to be payable to the Authority in terms of this Agreement, pending the Award in any arbitration proceedings hereunder. The Operator hereby agrees that pending any arbitral proceedings or a stay granted by any court of law, the interest on any unpaid amount payable to the Authority by the Operator shall continue to accrue and shall be payable to the Authority irrespective of such proceedings or the stay granted by the court of law.

## **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. Restraint set forth in Sub-articles 19.1.1 and 19.1.3 above, shall not apply to:

- (a) Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Operator;
- (b) Pledges/ hypothecation of goods/ moveable assets, equipments brought in by the Operator, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers to the Operator for the Project; or
- (c) Assignment of Operator's rights and benefits under this Agreement and other Project related agreements to or in favour of the Lenders, which shall include step in rights, as security for financial assistance provided by them.

Notwithstanding anything contained in Article 19, the rights of the Operator shall not be contrary to or in derogation of the provisions relating to Divestment Requirements contained in Clause 16.1.

## **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 Tender Notice, Scope of the Services to be provided, the Project Facility, Specifications and Standards set for providing quality services, local conditions, possible demand and all information provided by the Authority, or obtained, procured or gathered otherwise and has determined to its satisfaction its accuracy or impact otherwise and the nature and extent of difficulties, risks and hazards, as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 8.2, the Authority makes no representation whatsoever, express or implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 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 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 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 Base Rate + 2% (two percent) 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 authorised 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.**

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.

## **21.7. Survival**

21.7.1. Termination shall:

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

21.7.2. All obligations surviving Termination shall only survive for a period of 5 (five) 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 :  
Address :  
Tel: No.  
Fax No.  
Attention : The Commissioner

If to the Operator:  
Address :  
Telephone :  
Fax :  
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.

### **21.17. Validity**

This Agreement shall be valid for the entire Agreement Period.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED

THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE

HPIDB-Website-02-12-2019

**SECTION – III: SCHEDULES TO THE AGREEMENT**

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## SCHEDULE A

### DETAILS OF THE PROJECT FACILITY

<b>Parking at Tutikandi</b>							
Sr. No.	Particular	Level	Particulars	Qty/Area		Area	Capacity of Vehicles
1.	Top Floor	95.3	Restaurants	2	Nos	1876 Sq. ms.	
			Common area between restaurant	1	Nos		
			Gents Toilet	2	Nos		
			Ladies Toilet	2	Nos		
			Handicapped Toilets	2	Nos		
			Kitchen	2	Nos		
			Guard Room	2	Nos		
			Security Room	2	Nos		
			Toilet for Guard Room	2	Nos		
			Shops	4	Nos		
			Fountain with open Yard	1	Nos		
			Parking area in front of Restaurant	381	Sq. ms.		
			Machine Room on top of Restaurant	338	Sq. ms.		
			Control Room on top of Restaurant				
2.	Floor-10	91.4	Parking with two no.s of Toilet	3669.54	Sq. ms.		75
3.	Floor-9	87.8	Parking with two no.s of Dormitories and Toilet	3669.54	Sq. ms.		75
4.	Floor-8	84.2	Parking with two no.s of	3669.54	Sq. ms.		75

			Toilet				
5.	Floor-7	80.6	Parking with two no.s of Dormitories and Toilet	3669.54	Sq. ms.		75
6.	Floor-6	77	Parking with two no.s of Toilet	3669.75	Sq. ms.		100
7.	Floor-5	73.4	Parking and Toilet for Govt. Offices	3669.75	Sq. ms.		100
8.	Floor-4	69.8	Floor reserved for Govt. Offices	3669.75	Sq. ms.		
9.	Floor-3	66.2	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
10.	Floor-2	62.4	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
11.	Floor-1	59	Floor reserved for Govt. Offices	1987.4	Sq. ms.		
12.	Basement-2	55.4	Service Floor				
13.	Basement-1	51	Under Service Floor/ Pump Room				
			Under Ground Water Tank				
			Fire Tank	3	2 lacks lrs capacity		
			Domestic Water Tank	2	2.5 ltrs capacity		
			Tanks for STP	1	Nos		
			Lifts	4	Nos		

**Location:** The project is located at Tutikandi Crossing in Shimla, Himachal Pradesh.

The total site area is [•] Acres ([•] Hectares) with the built up area of =.....SQM.

## **SCHEDULE B**

### **FORMAT FOR BANK GUARANTEE**

#### **(Performance Security)**

The Commissioner,  
Municipal Corporation, Shimla  
Shimla,  
Himachal Pradesh

#### **WHEREAS:**

- (A) \*\*\*\* (the “**Operator**”) and the Commissioner, Municipal Corporation, Shimla (the “**Authority**”) have entered into a Agreement dated \_\_\_\_\_ (the “**Agreement**”) whereby the Authority has agreed to the Operator undertaking Operation, Maintenance and Management of Tutikandi Parking-cum-Commercial Complex at, Shimla, Himachal Pradesh through Public Private Partnership (PPP) on Operation, Maintenance, Management and Transfer (OMMT) basis (hereinafter referred to as the “**Project**”), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of Rs \_\_\_\_\_ (Rupees \_\_\_\_\_) [the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Agreement Period (as defined in the Agreement).
- (C) We, \*\*\*\*\* through our Branch at \*\*\*\*\* (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator’s obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of the Commissioner, Municipal Corporation, Shimla, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Operation Period under the Agreement and its decision

that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect 1900 (One thousand nine hundred) days from the date of the Agreement or an earlier date if the Agreement is terminated as per any provision of the Agreement, and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by an auditor of the Operator, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this \*\* day of \*\*\*, 20\*\* at \*\*\*.

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Address)

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## **SCHEDULE C**

### **LIST OF PROHIBITED ACTIVITIES**

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

1. Gambling activities
2. Smoking and sale/ purchase of tobacco products
3. Installing any mobile/ telecom tower(s)
4. Any activity that is unlawful / illegal or deemed unlawful under any Indian Act or legislation.

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## SCHEDULE D

### OPERATION & MAINTENANCE REQUIREMENTS

The Operator shall, adhere to the following standards of operation and maintenance till the end of Agreement Period:

#### **Cleanliness**

- Operator shall ensure that the Project Facility areas are always clean and properly lit.
- Operator shall arrange for dustbins in Project Facility areas to minimize littering from Users of the Project Facility
- There should be regular sweeping of the Project Facility areas multiple times in a day to ensure cleanliness
- While cleaning the Project Facility, Operator shall make sure that the dump shall not be thrown in the surroundings, except any area which is designated by the Authority for such purpose
- Operator shall follow adequate waste management and disposal methods for waste generated from Project Facility operations
- Operator shall follow the following timetable for routine cleaning of the Project Facility:
  - **Daily Tasks:** Clean lavatories, sweep and wash floors, dust, clean (open) drains, empty dustbins, scrub kitchen tables. Toilets on all the floors are to be kept clean with proper ventilation, liquid soap, air freshners and adequate availability of water always.
  - **Weekly Tasks:** Clear cobwebs, clean doors and windows, kitchen walls,
  - **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks.
  - **Annual Tasks:** Whitewash, pest eradication, contract renewals, clean air-conditioning system
- Operator shall ensure that operation of the Facility does not disturb rest of the activities in the surroundings
- Information signages and display boards shall be visible, legible and functional. These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of detection.
- Operator shall not damage, destruct or demolish any structure, area or asset, which is owned by Authority, inside or outside Project Facility areas without prior instructions and / or approval of Authority
- **Electric Meter** – Operator shall check all meters once in a month time to ensure that they are functioning and are showing correct readings
- **Standby Power Supply** – Operator shall make sure that standby power supply by DG sets should be available 24 hours.
- Any fault in the building amenities which may include but not limited to Air conditioners, CCTV cameras, fire safety arrangements / alarms, lifts, DG Sets, Sewerage Treatment Plants, solar panels, switches, receptacles, wiring, other electrical equipments etc. shall be identified, tested and repaired within 24 hours of detection to prevent accidents.
- **Suggestions extended by NODAL OFFICER** – Operator shall comply with the suggestion / directions made by the NODAL OFFICER from time to time within 24 hours.

- **Security and Safety of the Project Facility & the Users of the Facility** – The operator shall make appropriate arrangements in consultation with the Authority for the safety and security to be maintained at all times at the Project Facility.

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## **SCHEDULE E**

### **LIST OF INSTALLED ITEMS IN THE PROJECT FACILITY**

The following are the items, equipments and appliances which are currently installed in operational state in the Project Facility and shall be considered the property of the Authority but the Operator shall be responsible to operate and maintain the same at its cost and expense :

List to be prepared during the Conditions Precedent period jointly by the Parties

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## SCHEDULE F

### VESTING CERTIFICATE

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