

**Uttarakhand Tourism Development Board  
Government of Uttarakhand**

**Request for Proposal**

**For**

**Renovation, Development and O&M of Watersports Resort at Baur  
Jalashay in Udham Singh Nagar District on PPP Mode**



**Uttarakhand**

*Simply Heaven!*

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## **Disclaimer**

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This RFP Document is not an agreement and is not an offer or invitation by the Government Representatives to any party other than the Bidders who are qualified to submit the Proposal (Bidders). The purpose of this RFP Document is to provide the Bidder with information to assist the formulation of their proposals. This RFP Document does not purport to contain all the information each Bidder may require. This RFP Document may not be appropriate for all persons, and it is not possible for the Government Representatives, their employees or advisors, Uttarakhand Public Private Partnership Cell to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP Document. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP Document and where necessary obtain independent advice from appropriate sources. The Government Representatives, their employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the RFP Document.

The Government Representatives may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP Document. The Procurement Entity is also at liberty to call off this process, anytime during the bidding process, without giving any reason whatsoever.

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## **Part I: Instructions to Bidders**

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# 1 Instruction to Bidders

## A. Introduction

### 1.1 Project Background

1.1.1 Uttarakhand Tourism Development Board (“UTDB” or the “Authority”) is the owner of a Watersports Resort at Baur Jalashay, in Udham Singh Nagar, comprising 6 cottages, Dormitory Building, Swimming Pool Area, Staff Quarters, Rock Climbing Wall (the “**Project Site**”).

1.1.2 With an aim of developing the Project Site, UTDB invites proposal from interested parties for the Renovation, Development and O&M of the Project Site on Design-Build-Finance-Operate Transfer basis (the “**Project**”). A summary of the Project Scope is provided in Annexure 1 of this Instruction to Bidders

### 1.2 Brief Description of Bidding Process

1.2.1 UTDB intends to adopt a single stage two bid open transparent competitive bidding process as per Procurement Rules of Uttarakhand, 2017 for selection of the successful bidder for the Project

1.2.2 The Proposals would be evaluated on the basis of the qualification and evaluation criteria set out in this RFP Document in order to identify the Successful Bidder.

## B. General

### 1.3 Scope of Proposal

1.3.1 UTDB invites detailed Proposals from Bidders who fulfil the pre-qualification criteria indicated in clause 1.24.2 for implementation of the Project.

1.3.2 The Proposals would be evaluated on the basis of the evaluation criteria set out in this RFP Document (“**Evaluation Methodology**”) in order to identify the successful Bidder for the Project (“**Successful Bidder**”). The Successful Bidder would then have to enter into a Concession Agreement with UTDB and perform the obligations as stipulated therein, with respect to this Project.

1.3.3 Terms used in this RFP Document which have not been defined herein shall have the meaning ascribed thereto in the Draft Concession Agreement.

### 1.4 Eligible Bidders

1.4.1 Bidders who fulfil the pre-qualification criteria indicated in clause 1.24.2 are eligible to submit Technical and Financial Proposal in response to this RFP Document.

- 1.4.2 All witnesses and sureties shall be persons of status and probity and their full names and addresses shall be stated below their signature. All signatures in the Proposal documents shall be dated
- 1.4.3 Bidders shall provide such evidence of their continued eligibility to the satisfaction of UTDB, as UTDB may reasonably request.
- 1.4.4 A Power of Attorney for signing of Proposals needs to be furnished by the Bidder or by the Lead Member in case the Bidder is a consortium, in favour of the Authorized Signatory as per format provided in Appendix-8.
- 1.4.5 In case the Bidder is a Consortium (the "Consortium" or the "Bidding Consortium"), it shall comply with the following requirements:
- a. Number of members in a Consortium shall not exceed 3 (three),
  - b. The Proposal shall be signed by the duly Authorised Signatory of the Lead Member and shall be legally binding on all the members of the Consortium
  - c. The Application should contain information required for each member of the Consortium;
  - d. Members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity shareholding of at least 51% (Fifty One per cent) of the paid up and subscribed equity of the SPV to be formed to implement the Project, in the event of the Project being awarded to the Consortium. The other members of the consortium shall hereinafter be referred to as Other Member(s).
  - e. The Members of the Consortium should furnish a Power of Attorney in favour of the Lead Member as per format provided in Appendix-9
  - f. The Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
  - g. An individual Bidder cannot at the same time be member of a Consortium. Further, a member of a Bidding Consortium cannot be a member of any other Bidding Consortium;
  - h. The members of a Consortium shall form an appropriate SPV to execute the Project, if the Project is awarded to the Consortium;
  - i. Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified in Appendix-10 (the "**Jt. Bidding Agreement**"), for the purpose of making the Application
  - j. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, *inter alia*:
    - i. Convey the intent to form an SPV with shareholding/ ownership/ equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement with UTDB and subsequently perform all the obligations of the Concessionaire in terms of the Concession 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. Commit the minimum equity stake to be held by each member;
- iv. Commit that the Lead member shall subscribe to 51% (Fifty One per cent) or more of the paid up equity of the SPV and shall further commit that such member shall, during the entire Concession Period hold equity share capital not less than 51% (Fifty One per cent) of the paid up equity share capital of the SPV.
- v. Members of the Consortium undertake that they shall collectively hold 100% (One hundred per cent) of the paid-up equity of the SPV at all times during the entire Concession Period.
- vi. Any change in the shareholding of any Member in the SPV shall be subject to approval by UTDB
- vii. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Commercial Operation Date (CoD) of the Project is achieved in accordance with the Concession Agreement.
- viii. Except as provided under this RFP and the Bid Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of UTDB.

1.4.6 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 5 per cent of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act 2013. For the purposes of this Clause 1.4.6 (i), indirect shareholding held through one or more intermediate persons shall be computed as follows:
  - a. where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject**

**Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

- b. subject always to sub-clause (a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (b) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary;

or

- ii. a constituent of such Bidder is also a constituent of another Bidder;

or

- iii. such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof;

or

- iv. such Bidder has the same legal representative for purposes of this Application as any other Bidder;

or

- v. such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other;

or

- vi. Such Bidder or any Associate thereof has participated as a consultant to UTDB in the preparation of any documents, design or technical specifications of the Project.

1.4.7 A Bidder shall be liable for disqualification if any legal, financial or technical adviser of UTDB in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the

Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

1.4.8 Explanation: In case a Bidder is a Consortium, then the term Bidder as used in this Clause 1.4, shall include each Member of such Consortium.

1.4.9 For purpose 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 percent) of the voting share 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.

**1.5 Change in Composition of the Bidder**

1.5.1 Any change in composition of the Bidder after the submission of the Application would be at the sole discretion of UTDB and with prior written permission of UTDB

**1.6 Number of Proposals**

1.6.1 Each Bidder shall submit only one (1) Proposal for the project in response to this RFP Document. Any entity, which submits or participates in more than one Proposal will be disqualified and will also cause the disqualification of Consortium in which it is a member.

**1.7 Proposal Preparation Cost**

1.7.1 The Bidder shall be responsible for all the costs associated with the preparation of its Proposal and its participation in the bidding process. UTDB will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of bidding.

**1.8 Contents of RFP Document**

1.8.1 RFP Document consists of 2 Parts as listed below and would include any addenda issued in accordance with Clause 1.8:

Part I	Instructions to Bidders
Part II	Draft Concession Agreement

## **1.9 Clarifications**

1.9.1 Bidders requiring any clarification on the RFP Document may notify UTDB in writing or by facsimile within such date as specified in the Schedule of Bidding Process. Based on its sole discretion, UTDB may forward to all Bidders, copies of UTDB response, including a description of the enquiry but without identifying its source.

## **1.10 Amendment of RFP Document**

1.10.1 At any time prior to the Proposal Due Date, UTDB may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP Document by the issuance of Addenda.

1.10.2 Any Addendum / Corrigendum thus issued will be posted on the website: [www.uktenders.gov.in](http://www.uktenders.gov.in).

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

## **C. Preparation and Submission of Proposal**

### **1.11 Language and Currency**

1.11.1 The Proposal and all related correspondence and documents shall be written in the 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 an appropriate translation into English. Supporting materials that are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

1.11.2 The currency for the purpose of the Proposal shall be the Indian Rupee (INR).

### **1.12 Bid Security**

1.12.1 The Bidder shall furnish a Bid Security along with the Application

1. Bid Security shall be of INR 29.16 lakh (INR Twenty-Nine lakh Sixteen Thousand only) to be paid online.
2. Proposals not accompanied by Bid Security shall be summarily rejected.
3. The Proposal fee and Bid Security should be remitted through net banking. The details are:

Beneficiary name – CEO Uttarakhand Tourism Development Board  
Dehradun  
Bank's name – Allahabad Bank  
Account Number - 50517934250  
Branch – Nimbuwala, Garhi Cantt  
Address – Nimbuwala, Garhi Cantt, Dehradun  
IFSC – ALLA0213398  
GST No. – 05AAALU0031F1ZK  
PAN – AAALU0031F

- 1.12.1 The Bid Security shall be kept valid through the Proposal Validity Period and would be required to be extended if required by UTDB.
- 1.12.2 The Bid Security shall be returned without any interest to unsuccessful Bidders within a period of thirty (30) days from the date of announcement of the Successful Bidder.
- 1.12.3 The Successful Bidder's Bid Security will be returned, without any interest, upon the signing of the Concession Agreement and furnishing of the Performance Security in accordance with the provisions thereof.
- 1.12.4 The Bid Security shall be forfeited in the following cases:
- a. If the Bidder withdraws its Proposal except as provided in Clause 1.20;
  - b. If the Bidder withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period; and
  - c. If the Successful Bidder fails to provide the Performance Security within the stipulated time or any extension thereof provided by UTDB
- 1.12.5 The bidders (enterprises) complying with the provisions of Uttarakhand Government Order No. 1542/VII-3-19/143-Industry/2003 dated 20th August 2019 are exempted from payment of Tender Fee and Earnest Money Deposit (EMD).

### **1.13 Validity of Proposal**

- 1.13.1 The Proposal shall indicate that it would remain valid for a period not less than 120 (One Hundred and Twenty) days from the Proposal Due Date (Proposal Validity Period). UTDB reserves the right to reject any Proposal that does not meet this requirement.
- 1.13.2 Prior to expiry of the original Proposal Validity Period, UTDB may request that the Bidders extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. The bid of any bidder refusing to extend the bid security shall be returned and such Bidder shall not be included further in the bid process. A Bidder agreeing to

the request of extending the Proposal Validity Period will not be allowed to modify its Proposal but would be required to extend the validity of its Bid Security for this extended period and comply with Clause 1.12 of this document in all respects.

1.13.3 The Successful Bidder shall extend the Proposal Validity Period till the date of execution of the Concession Agreement.

#### **1.14 Bidder's Responsibility**

1.14.1 The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of RFP Document will be at the Bidder's own risk.

1.14.2 It would be deemed that prior to the submission of Proposal, the Bidder has:

- a. made a complete and careful examination of requirements, and other information set forth in this RFP Document;
- b. received all such relevant information as it has requested from UTDB; and
- c. made a complete and careful examination of the various aspects of the Project including but not limited to:
  - i. Scope for development of the project and likely commercial viability
  - ii. Structural Stability of the various existing facilities at the Project Site
  - iii. the conditions of the access roads and utilities in the vicinity of the Project Site
  - iv. conditions affecting transportation, access, disposal, handling and storage of materials
  - v. clearances obtained by UTDB for the Project; and
  - vi. All other matters that might affect the Bidder's performance under the terms of this RFP Document.

1.14.3 UTDB shall not be liable for any mistake or error or neglect by the Bidder in respect of the above.

#### **1.15 Pre-Proposal Meeting**

1.15.1 To clarify and discuss issues with respect to the Project and the RFP Document, UTDB may hold Pre-Proposal meeting/s on date specified in the Schedule of bidding process, subject to required permissions on account of situation arising out of COVID 19. Participation through Video Conference (VC) will be facilitated, details for which will be shared on request.

Attendance of the bidders at the Pre-Proposal meeting is not mandatory. But it is highly recommended to attend for understanding the provisions of RFP and Selection process.

1.15.2 Prior to the Pre-Proposal meeting/s, the Bidders may submit a list of queries and propose deviations, if any, to the Project requirements and/or the Draft Concession Agreement. Bidders must formulate their responses and forward the same to UTDB at least seven (7) days prior to the meeting. UTDB may amend the RFP Document based on inputs provided by Bidders that may be considered acceptable in its sole discretion.

1.15.3 Bidders may note that UTDB will not entertain any deviations to the RFP Document at the time of submission of the Proposal or thereafter. The Proposal to be submitted by the Bidders will be unconditional and unqualified and the Bidders would be deemed to have accepted the terms and conditions of the RFP Document with all its contents including the Draft Concession Agreement. Any conditional Proposal shall be regarded as non-responsive and would be liable for rejection.

1.15.4 UTDB will endeavour to hold the meeting as per Schedule of Bidding Process. The details of the meeting will be separately communicated to the Bidders.

1.15.5 Attendance of the Bidders at the Pre-Proposal meeting is not mandatory. However, subsequent to the meeting, UTDB may not respond to queries from any Bidder who has not attended the Pre-Proposal meeting.

1.15.6 All correspondence / enquiries should be submitted only through e-mail [pppcell.utdb@gmail.com](mailto:pppcell.utdb@gmail.com).

1.15.7 No interpretation, revision, or other communication from UTDB regarding this solicitation is valid unless posted on website: [www.uktenders.gov.in](http://www.uktenders.gov.in).

## **1.16 Format and Signing of Proposal**

1.16.1 Bidders would provide all the information as per this RFP Document and in the specified formats. UTDB reserves the right to reject any Proposal that is not in the specified formats.

1.16.2 The Proposal should be submitted in 3 parts:

**Part 1: Key Submissions**, which would include:

- i. Covering Letter cum Project Undertaking as per Appendix-2 stating the Proposal Validity Period
- ii. Anti-Collusion Certificate as per Appendix-3
- iii. Proof of deposit of Bid Security as Clause 1.12 of Instruction to Bidders
- iv. Power of Attorney for Signing of Application as per Appendix 8

- v. Power of Attorney for Lead Member in case the Bidder is a consortium as per Appendix-9
- vi. Proof of submission of cost of RFP Document

**Part 2: Technical Proposal** as per format set out in Appendix-5.

**Part 3: Financial Proposal** as per the format set out in Appendix - 6.

1.16.3 The Bidder shall prepare and submit online through website: [www.uktenders.gov.in](http://www.uktenders.gov.in) scanned copies of original documents comprising the Proposal as described in Clause 1.17. The (a) Original Power of Attorney (as per format), (b) Original Affidavit (as per format), (c) Original Bank Guarantee for EMD (if applicable) and (d) Original JV Agreement (if applicable) shall be sent by registered post / speed post / courier to Planning Section of UTDB, Pt. Deen Dayal Upadhyay, Paryatan Bhawan, Near O.N.G.C. Helipad, Nimbuwala, Garhi Cantt, Dehradun, within five (5) working days following Technical Proposal opening. The Proposal Inviting Authority shall not be held liable for any delays in the receipt of these documents. Scanned copies of these documents should also be uploaded as part of Technical Proposal.

1.16.4 In case these original documents (referred in previous paragraph) are not received within the stipulated time; or scanned copies of these original documents not uploaded in the Technical Folder, the proposal shall be summarily rejected. In addition, scanned copies of payment instructions / transactions with regard to payment of tender fee and EMD should also be uploaded as part of Technical Proposal. No other original documents are required at this stage

## **1.17 Sealing and Marking of Proposals**

1.17.1 The Bidder shall submit / upload Technical Proposal and the Financial Proposal as per provisions on the e-portal [www.uktenders.gov.in](http://www.uktenders.gov.in).

## **1.18 Proposal Due Date**

1.18.1 Proposals should be submitted / uploaded on the website: [www.uktenders.gov.in](http://www.uktenders.gov.in). Submission of proposals through any other mode is not acceptable and shall be rejected.

1.18.2 UTDB, at its sole discretion, may extend the Proposal Due Date by issuing an Addendum in accordance with Clause 1.10.1

## **1.19 Late Proposals**

1.19.1 The portal will not accept any proposal after the specified due time as per its server clock.

## **1.20 Modification and Withdrawal of Proposals**

1.20.1 The Bidder may modify or withdraw its Proposal on e-portal before the Proposal Due Date and time. No Proposal shall be modified or withdrawn by the Bidder after the Proposal Due Date and time.

1.20.2 Withdrawal of a Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period would result in forfeiture of the Bid Security in accordance with Clause 1.12.4 of this document.

## **1.21 Tests of responsiveness**

1.21.1 Prior to evaluation of Proposals, UTDB will determine whether each Proposal is responsive to the requirements of the RFP Document. A Proposal shall be considered responsive if

- a. it is received only on e-portal.
- b. Submitted as per provisions of the e-portal.
- c. it contains the information and documents as requested in the RFP Document.
- d. it contains information in formats specified in the RFP Document.
- e. it mentions the proposal validity period as set out in Clause 1.13.
- f. it provides the information in reasonable detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by UTDB without communication with the Bidder). UTDB reserves the right to determine whether the information has been provided in reasonable detail.
- g. there are no inconsistencies between the Proposal and the supporting documents.

1.21.2 A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one

- a. which affects in any substantial way, the scope, quality, or performance of the Project,  
or
- b. which limits in any substantial way or is inconsistent with the RFP Document, UTDB's rights or the Bidder's obligations under the Concession Agreement,  
or
- c. which would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.

1.21.3 UTDB reserves the right to reject any Proposal which in its opinion is non-responsive and no request for modification or withdrawal shall be entertained by UTDB in respect of such Proposals.

1.21.4 Conditional proposal shall not be considered. Any bid found to contain conditions attached, will be rejected.

## 1.22 Confidentiality

1.22.1 Information relating to the examination, clarification, evaluation and recommendation shall not be disclosed to any person not officially concerned with the process. UTDB will treat all information submitted as part of Proposal in confidence and will ensure that all who have access to such material treat it in confidence. UTDB will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure.

## 1.23 Clarifications

1.23.1 To assist in the process of evaluation of Proposals, UTDB may, at its sole discretion, ask any Bidder for clarification on its Proposal. The request for clarification and the response shall be in writing or e-mail or by facsimile. No change in the substance of the Proposal would be permitted by way of such clarifications.

## 1.24 Proposal Evaluation

1.24.1 To assist in the examination, evaluation, and comparison of Proposals, UTDB may utilise the services of consultant/s or advisor/s.

1.24.2 The Bidders would be expected to meet the following pre-qualification criteria which would be a part of the Technical Proposal. Bidders failing to meet these criteria or not submitting requisite proof for supporting pre-qualification criteria are liable to be rejected at the Technical Proposal level.

Sl. No	Criteria	Reference Details
1	The bidder/ member of bidding consortium should be a <b>public/private</b> organization registered in India as a Proprietor/ Company/ society/ firm under respective Act	For Bidder, Copy of Certificate of Incorporation/ registration (duly signed by the authorized signatory of the bidder).  Bidder's GST Registration Copy
2	The bidder should have a minimum net worth of <b>INR 4.79 crores</b> as on 31 <sup>st</sup> March 2020. In case the bidder is a	As per Appendix 7 and duly certified by the statutory auditor / CA.

Sl. No	Criteria	Reference Details
	consortium, the minimum combined net worth of all members with an equity participation of at least 26% in the consortium will be of same value.	Bidder should have attached relevant portion of duly audited balance sheet for relevant block of Financial Years.  Certificate from the statutory auditor / CA must carry valid UDIN.
3	The Bidder in the last five financial years should have obtained at least three (3) years of experience in operating hotels, resorts or camping sites. In the case of a consortium, only the experience of Members with an equity participation of at least 26% in the consortium, shall be considered	As per Appendix 5 and duly certified by the statutory auditor / CA.  Certificate from the statutory auditor / CA must carry valid UDIN.

1.24.3 The Bidder shall submit an affidavit stating that it is in compliance with provision 1.4.6 of this RFP which relates to Conflict of Interest

1.24.4 The technical and financial capability of any Member of a Bidding Consortium having equity participation of less than 26% shall not considered for the purpose of evaluation.

1.24.5 Past experience of more than one Member of a Consortium pertaining to the same project shall be counted as experience of only one Member of that Consortium.

1.24.6 If the Bidder is a consortium, it shall attach signed Joint Bidding Agreement between Members of the Consortium specifying their respective equity participation in the project. The respective equity participations of the Members of the Consortium should add up to 100%.

1.24.7 Evaluation of Proposals will be done in two stages.

1.24.8 In Stage I of Proposal Evaluation, the Key Submissions submitted by the Bidders shall be checked for responsiveness with the requirements of the RFP Document.

1.24.9 The evaluation of Technical Proposal of a Bidder shall be taken up only after the contents of the Key Submissions are found to meet the requirements of this RFP Document. UTDB reserves the right to reject the Proposal of a Bidder without opening the Technical Proposal if the contents of Key

Submissions are not substantially responsive with the requirements of this RFP Document.

1.24.10 After checking the responsiveness of the Key submission, the Technical Proposal will be opened and evaluated as per section 3.1 of this RFP Document

## **1.25 Evaluation of the Financial Proposal**

1.25.1 In Stage II, the Financial Proposals of all the Bidders who pass the Stage I evaluation will be opened in the presence of the Bidders' representatives who choose to attend. The Bidders' representatives who choose to be present shall be required to sign and record their attendance.

1.25.2 Evaluation of Financial Proposal shall be done as per section 3.2 of this RFP Document.

## **1.26 Notifications**

1.26.1 Upon acceptance of the Financial Proposal of the Preferred Bidder with or without negotiations, UTDB shall declare the Preferred Bidder as Successful Bidder.

1.26.2 UTDB will notify the Successful Bidder by facsimile or e-mail and by a letter (Speed Post / Registered Post) that its Proposal has been accepted.

## **1.27 UTDB's Right to Accept or Reject Proposal**

1.27.1 UTDB reserves the right to accept or reject any or all of the Proposals without assigning any reason and to take any measure as it may deem fit, including annulment of the bidding process, at any time prior to award of Project, without liability or any obligation for such acceptance, rejection or annulment.

1.27.2 UTDB reserves the right to reject any Proposal including that of the Preferred bidder if:

- a. at any time, a material misrepresentation is made or uncovered; If a fraud or fraudulent practice adopted by any bidder is established, the bidder may be blacklisted and /or appropriate legal proceedings may be initiated against such bidder as per the prevailing laws OR
- b. the Bidder does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal.

This would lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium would be disqualified/ rejected. If such disqualification/ rejection occurs after the Financial Proposals have

been opened and the highest ranked Bidder gets disqualified / rejected, then UTDB reserves the right to:

- a. either invite the next highest ranked Bidder to match the Financial Proposal submitted by the highest ranked Bidder; OR
- b. take any such measure as may be deemed fit in the sole discretion of UTDB, including annulment of the bidding process.

## **1.28 Acknowledgement of Letter of Acceptance (LOA)**

1.28.1 Within two (2) weeks from the date of issue of the LOA, the Successful Bidder shall acknowledge the receipt of LOA.

## **1.29 Execution of Concession Agreement**

1.29.1 The Successful Bidder shall execute the Concession Agreement within 30 (Thirty) days of the issue of LOA or such time as indicated by UTDB

1.29.2 UTDB will promptly notify other Bidders that their Proposals have been unsuccessful, and their Bid Security will be returned as promptly as possible in any case not later than 30 (thirty) days from the date of announcement of Successful Bidder.

## **1.30 Performance Security**

1.30.1 The Successful Bidder shall furnish Performance Security for an amount given under 3.2 (Performance Security) of Article 3 in the Draft Concession Agreement by way of an irrevocable Bank Guarantee issued by a scheduled bank located in India in favour of UTDB as required under the Concession Agreement.

1.30.2 The Performance Security shall be in the form of an irrevocable Bank Guarantee in favour of UTDB, as per the format set out in Annexure 4 of the Draft Concession Agreement. The Performance Security would be valid for an initial period of 1 year and shall be renewable every year during the entire project term. The final renewal of the Bank Guarantee, i.e. the renewal due in the last 12 months of the Concession Period shall be for a period ending not before 6 months after the expiry of the Concession Period

1.30.3 The Performance guarantee shall be forfeited and en-cashed in the following cases:

- a. If the Successful Bidder withdraws from the project midway during the project term
- b. Any other act or acts of the successful bidder which renders the project un-operational or unsafe and UTDB establishes sufficient reasons to

forfeit the performance guarantee.

- c. If the bidder fails to fulfill its financial obligation to UTDB regarding payment of Annual Concession Fee or any other payables.
- d. If the bidders action/negligence damages the Project Site or Project Assets
- e. If the bidder fails to adhere to the provisions of the Concession Agreement

**1.31 Cost of RFP document:**

1.31.1 The RFP document can be downloaded from [www.uktenders.gov.in](http://www.uktenders.gov.in). The cost of RFP document is INR 10,000/- + Applicable GST to be paid online as per details given under Instruction to Bidders Clause No. 1.12.1. The Proposal Document Fee is non-refundable. Non-submission of Proposal Document Fee along with the technical proposal shall be summarily rejected. The bidders (enterprises) complying with the provisions of Uttarakhand Government Order No. 1542/VII-3-19/143-Industry/2003 dated 20<sup>th</sup> August 2019 are exempted from payment of Tender Fee and Earnest Money Deposit (EMD).

## 2. Schedule of Bidding Process

### 2.1 The following shall be the schedule of Selection Process:

Sl. No.	Description	Date & Time
1	Issue of Request for Proposal	25/01/2021 from 11:00 Hrs
2	Pre-proposal meeting	01/02/2021 at 12:00 Hrs
3	Last date for receiving Queries/ Suggestions	01/02/2021 at 17:00 Hrs
4	Proposal submission start date	25/01/2021
5	Proposal Due Date or PDD	15/02/2021 till 15:00 Hrs
6	Opening of Technical Proposals	15/02/2021 till 15:30 Hrs
7	Opening of Financial Proposals	To be intimated later

#### **Pre-proposal meeting and Opening of Proposals:**

#### **Venue:**

Due to prevailing Covid-19 pandemic, Pre-proposal meeting shall be held online as per schedule.

Interested bidders willing to participate in Pre-proposal meeting are requested to share their intent of joining the meeting online on [pppcell.utdb@gmail.com](mailto:pppcell.utdb@gmail.com) mentioning "Pre-Proposal Meeting – Baur Jalashay", so that meeting link can be forwarded to them.

### 3 Evaluation Methodology

#### 3.1 Evaluation of Technical Proposal

- 3.1.1 Bidders meeting the pre-qualification criteria in 1.24.2 shall be considered technically qualified and financial Bids of only those Bidders shall be opened

#### 3.2 Evaluation of Financial Proposals

The bidder shall quote a fixed Annual Concession Fee amount. The minimum amount of Annual Concession Fee for the first year is fixed at INR 30.00 Lakh. The bidder shall quote Annual Concession Fee amount for the first year over and above this minimum amount. This Concession Fee shall increase from second year by 5% every year over the previous year Concession Fee commencing and payable from Second year The bidder shall quote a fixed Annual Concession Fee amount, to be paid every 12 months from the Compliance Date as per Article 2.9.1 of Part II of the RFP.

- 3.2.1 The bidder quoting the highest amount of Annual Concession Fee for the 1<sup>st</sup> year shall be declared as the Preferred Bidder for the facility.
- 3.2.2 In the event that two or more Bidders quote same amount, UTDB may (In this order):
- a. invite fresh financial proposals from such concerned Bidders only; or**
  - b. take any such measure as may be deemed fit in its sole discretion including annulment of the bidding process.**
- 3.2.3 UTDB may either choose to accept the Proposal of the Preferred Bidder or invite him for negotiations.
- 3.2.4 Upon acceptance of the Financial Proposal of the Preferred Bidder with or without negotiations, UTDB shall declare the Preferred Bidder as the Successful Bidder.

## 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. Notwithstanding anything to the contrary contained herein, UTDB may reject an Application without being liable in any manner whatsoever to the Bidders if it determines that the Bidders has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of UTDB, if a Bidders is found by UTDB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidders shall not be eligible to participate in any tender or RFP issued by UTDB or by any other agency of Government of Uttarakhand during a period of 2 (two) years from the date such Bidders are found by UTDB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this 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 UTDB who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of UTDB, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 1.2.6, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of UTDB in relation to any matter concerning the Project;
  - b. 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 UTDB 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.

## **Annexure - 1**

### **Brief Summary of Scope of the Project**

The Concessionaire may undertake capex towards the following developments

1. Renovation and furnishing of 7 rooms, restaurant and conference room(s) therein
2. Renovation and re-furbishment of 6 Cottages
3. Renovation of Dormitory Building and furnishing of 6 dormitories, restaurant, bar and game room therein
4. Renovation of Staff Quarters Building and furnishing of the 6 staff quarters therein
5. Any renovation as required for making Swimming Pool operational

### **O&M Period**

The Concessionaire shall for the duration of the Concession Period have the following rights and obligations

1. The Concessionaire may rent out the rooms, cottages, dormitories to guests and collect room rentals in lieu of this
2. The Concessionaire may offer F&B services through the restaurants and bar on a commercial basis
3. The Concessionaire may host events and conferences at the Project Site on a commercial basis
4. The Concessionaire shall maintain the Project Site and Project Facilities as per Applicable Law, Industry Norms and Applicable Safety Standards

## **APPENDIX-1**

### **Format for Acknowledgement of RFP Document and Notification of Intent to Submit Proposal**

Not applicable

## APPENDIX-2

### Format for Covering Letter cum Project Undertaking

To

The CEO  
Uttarakhand Tourism Development Board  
Pt. Deendayal Upadhaya Paryatan Bhawan  
Near ONGC Helipad, Garhi Cantt, Dehradun,  
Uttarakhand 248001

Dear Sir,

**Re: Renovation, Development and O&M of Watersports Resort at Baur Jalashay in Udham Singh Nagar District on PPP Mode**

We have read and understood the Request for Proposal (RFP) Document in respect of the above Project downloaded from [www.uktenders.gov.in](http://www.uktenders.gov.in) and we hereby submit our Proposal.

We confirm that our Proposal is valid for a period of 120 (One Hundred Twenty) days from last date for submission of Proposals.

We hereby agree and undertake as under:

Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is unqualified and unconditional in all respects and we agree to the terms of the Draft Concession Agreement, a draft of which also forms a part of the RFP Document provided to us.

Dated this .....Day of ....., 2021.

Name of the Bidder

.....

Signature of the Authorised Person

.....

Name of the Authorised Person

Note:

- *On the Letterhead of the Bidder.*

## APPENDIX-3

### Format for Anti-Collusion Certificate

#### Anti-Collusion Certificate\*\*\*

We hereby certify and confirm that in the preparation and submission of this Proposal, we have not acted in concert or in collusion with any other Bidder or other person/s and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated this .....Day of ....., 2021

Name of the Bidder

.....

Signature of the Authorised Person

.....

Name of the Authorised Person

**\*\*\* On the bidder's letter head.**

## APPENDIX-4

### (Performa of Performance Bank Guarantee)

**THIS DEED OF GUARANTEE** executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (Name of the Bank) having its Head/Registered office at \_\_\_\_\_ hereinafter referred to as “the Guarantor” which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

#### In favour of

Uttarakhand Tourism Development Board hereinafter referred to as “**UTDB**”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

#### WHEREAS

By the Concession Agreement entered into between UTDB and \_\_\_\_\_, a company incorporated under the provisions of the Companies Act, 2013, having its registered office/permanent address at \_\_\_\_\_ (“the Concessionaire”), the Concessionaire has been granted the Concession for **Renovation, Development and O&M of Watersports Resort at Baur Jalashay in Udham Singh Nagar District on PPP Mode**, for a period of **30 years** (hereinafter referred to as “**the Project**”).

A. In terms of the Concession Agreement, the Concessionaire is required to furnish to UTDB, an unconditional and irrevocable bank guarantee for an amount of Rs.... (in words) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to Project by the Concessionaire.

At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

#### NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

1. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. \_\_\_\_\_ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project and in connection with achieving the project objectives by the Concessionaire in accordance with the Concession Agreement.

2. The Guarantor shall, without demur, pay to UTDB sums not exceeding in aggregate INR ... (in words) within seven (7) calendar days of receipt of a written demand thereof from UTDB stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by UTDB and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor’s obligations

hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

In order to give effect to this Guarantee, UTDB shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by UTDB or any indulgence shown by UTDB to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by UTDB or any indulgence shown by UTDB, provided nothing contained wherein shall enlarge the Guarantor's obligation hereunder.

This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_ unless discharged/ released earlier by UTDB in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of INR ... (in words).

3. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by

\_\_\_\_\_ Bank

by the hand of Shri \_\_\_\_\_

its \_\_\_\_\_ and authorised official.

## APPENDIX-5

### Format for Technical Proposal

(To be provided on the Letterhead of the Bidder and to be signed by the Bidder)

#### A. Previous Experience of the bidder in operating hotels, resorts or camping sites on a commercial basis

Sl. No.	Name of Bidder/ Member of Bidding Consortium	Type of Service	Location of operations	Period of Operations in the past five financial years (starting date to end date)
1				
2				
3				

This is to certify that I/ we during last five financial years have operated ..... number of resorts/ camping sites for .....years.

.....

Name of the Bidder

.....

Signature of the Authorised Person

.....

Name of the Authorised Person

Sign & Seal of CA/ Statutory Auditor

Membership No.:

Name of CA/ Statutory Auditor

UDIN

## **APPENDIX 6**

### **Format for Financial Proposal**

As per BoQ in the Financial Folder.

## APPENDIX 7

### Format for Financial Capability

<b>Bidder</b>	<b>Net worth As on 31<sup>st</sup> March 2020 (INR in Lakhs)</b>
Sole Bidder	
Lead Member of Consortium	
Other Member with minimum 26% share in consortium (in case of Consortium)	
<b>Total</b>	

1. The Bidder should provide the Financial Capability based on its own financial statements. Financial capability of the Bidder's parent company or its subsidiary or any associate company (who are not members of the Consortium) will not be considered for computation of the Financial Capability of the Bidder.
2. This statement should be certified by CA along with his / her firm's stamp and registration no.
3. The Bidder may provide the audited annual financial statements like Balance Sheet and Profit & Loss Account.

#### General Instructions:

##### 1. Net Worth

- For Company = Paid-up Equity Capital fund + Free Reserves
- For Partnership Firm = Aggregate of partners' capital account + Reserves - Aggregate of drawings by partners - Aggregate of advances to partners - (Revaluation reserves + Miscellaneous expenditure not written off)
- For Proprietor firm/ Proprietorship = Capital account/ computation in ITR.

2. The Bidder shall provide the audited annual financial statements (Balance Sheet and Profit & Loss Account along with all schedules as required for this RFP Document. Failure to do so would be considered as a non-responsive bid.

Sign & Seal of CA/ Statutory Auditor

Membership No.:

Name of CA/ Statutory Auditor

UDIN

## APPENDIX-8

### Power of Attorney for signing of Application

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 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 application]/ [the Application of the Consortium comprising ..... who have nominated us as the Lead Member and True and Lawful Attorney of the Consortium], for pre-qualification and submission of [our]/ [the Consortium's] bid for **Renovation, Development and O&M of Watersports Resort at Baur Jalashay in Udham Singh Nagar District on PPP Mode**; Project proposed by Uttarakhand Tourism Development Board, (the "UTDB") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to UTDB, representing [us]/ [the Consortium] in all matters before UTDB, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of [our]/[the Consortium's] bid, and generally dealing with UTDB in all matters in connection with or relating to or arising out of [our]/ [the Consortium's] bid for the said Project and/ or upon award thereof to [ us]/ [the Consortium] and/or till the entering into of the Concession Agreement with UTDB.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF .....2021

For .....

(Signature, name, designation and address)

Witnesses:

1. ....

(Notarised)

2. ....

Accepted

.....

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

## APPENDIX-9

### Power of Attorney for Lead Member of Consortium

Whereas the Uttarakhand Tourism Development Board, Government of Uttarakhand has invited applications from eligible bidders for **Renovation, Development and O&M of Watersports Resort at Baur Jalashay in Udham Singh Nagar District on PPP Mode** (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 (RFP) and other connected documents in respect of the Project,

AND

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ....., M/s.  
..... having our registered office at ....., and M/s.  
..... having our registered office at .....,

(hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney").

We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, 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 UTDB, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the Concession

Agreement is entered into with UTDB

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2021

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

1. The mode of execution of the Power of Attorney should be in accordance with the

procedure, if any, lay down by the applicable law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

2. Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

## APPENDIX-10

### Joint Bidding Agreement

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

THIS **JOINT BIDDING AGREEMENT** is entered into on this the ..... day of ....., 2021

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 2013} and having its registered office at ..... (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

2. {..... Limited, a company incorporated under the Companies Act, 2013} and having its registered office at ..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

3. {..... Limited, a company incorporated under the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the “Fourth Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

WHEREAS

Uttarakhand Tourism Development Board, represented by [ ] and having its office at Pt. Deendayal Upadhyay Paryatan Bhawan Near ONGC Helipad, Garhi Cantt. Dehradun, Uttarakhand – 248001 (India), hereinafter referred to as “UTDB”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns has invited applications (the Applications”) by its Request for Proposal No. .... dated .....(the “RFP”) for **Renovation, Development and O&M of Watersports Resort at Baur Jalashay in Udham Singh Nagar District on PPP Mode.**

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 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 Application.

NOW IT IS HEREBY AGREED as follows:

### **1. Definitions and Interpretations**

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

### **2. Consortium**

- a. The Parties do hereby irrevocably constitute a consortium (the "Consortium") for the purposes of jointly participating in the Bidding Process for the Project.
- b. 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**

- a. The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "SPV") under the Companies Act, 2013 for entering into a Concession Agreement with UTDB and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

### **4. Role of the Parties**

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

- a. Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Compliance Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- b. [Party of the Second Part shall be the Member 1 of the Consortium;]
- c. [Party of the Third Part shall be the Member 2 of the Consortium;]

### **5. Joint and Several Liabilities**

- a. The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till the Commercial Operations Date (COD) of the Project is achieved under and in accordance with the Concession Agreement.

## 6. Shareholding in the SPV

- a. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
  - First Party: .....
  - Second Party: .....
  - Third Party: .....
- b. The Parties undertake that a minimum of 51% (Fifty One per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the concession period, be held by the First Party whose experience and net worth has been reckoned for the purposes of qualification for the Project in terms of the RFP
- c. The Parties undertake that they shall collectively hold 100% (One Hundred per cent) of the subscribed and paid up equity share capital of the SPV at all times until end of the Concession period.
- d. The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

## 7. Representation of the Parties

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

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

## 8. Termination

- a. This Agreement shall be effective from the date hereof and shall continue in full force and effect until the COD of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium.
- b. 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 pre-qualified or upon return of the Bid Security by UTDB to the Bidder, as the case may be.

## 9. Miscellaneous

This Joint Bidding Agreement shall be governed by laws of India. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of UTDB.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of:

LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of:

SECOND PART by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of:

THIRD PART by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of:

FOURTH PART by:

(Signature) (Signature)

(Name) (Name)

(Designation) (Designation)

(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, lay down by the Applicable Law and the charter documents of the executants(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 notarised in the jurisdiction here the Power of Attorney has been executed.

## APPENDIX 11

### List of attachments with the bid

<b>S. No</b>	<b>Description</b>
<b>1</b>	Covering Letter cum Project Undertaking - Appendix 2
<b>2</b>	Anti-Collusion Certificate - Appendix 3
<b>3</b>	Bid Security – Appendix 4
<b>4</b>	Technical Proposal – Appendix 5
<b>5</b>	Financial Proposal – Appendix 6
<b>6</b>	Financial Capability – Appendix 7
<b>7</b>	Power of Attorney for Signing of Application - Appendix 8
<b>8</b>	Power of Attorney for Lead Member of Consortium - Appendix 9
<b>9</b>	Joint Bidding Agreement - Appendix 10
<b>10</b>	Bank Draft towards cost of RFP document

**PART II - DRAFT CONCESSION AGREEMENT**

**BETWEEN**

Uttarakhand Tourism Development Board.

["AUTHORITY"]

**AND**

(Name of the Concessionaire)

["CONCESSIONAIRE"]

**{This Contract will be suitably modified as per changes that may be required / relevant based on Proposal finally accepted and pre-contract negotiation}**

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This **AGREEMENT** is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) at Dehradun,

BETWEEN

Uttarakhand Tourism Development Board having its registered office at Pandit Deendayal Upadhyay Paryatan Bhawan, Near ONGC Helipad, Garhi Cantt, Dehradun Uttarakhand 248001, represented by its Chief Executive Office (hereinafter referred to as "Authority"), which expression shall, unless the context otherwise requires, includes its administrators, successors and assigns) of the **ONE PART**;

**AND**

\_\_\_\_\_ Pvt. Ltd., a company incorporated under provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_, (or M/s \_\_\_\_\_ duly registered Partnership/Proprietorship Firm). (hereinafter referred to as the "**Concessionaire**", which expression shall, unless otherwise requires, mean and includes its successors/ successors in business and permitted assigns and substitutes) of the **OTHER PART**.

**WHEREAS,**

- A. The Authority [is the absolute owner of]/ [is in absolute possession of, along with all rights to develop] the Project Site detailed in Schedule 1.
- B. With an objective of developing the Project Site as a watersport hub and resort, the Authority had decided to select a Successful Bidder through a competitive bidding process to undertake the Project
- C. In pursuance of the above objective, the Authority had invited competitive Proposals/ Bids from parties interested in undertaking the Project by way of a Request for Proposal (the "**RFP**")
- D. In response to the RFP referred to in recital 'C' above, the Authority received Proposals from various Bidders;
- E. The Authority evaluated the Financial Proposals submitted by all Bidders who met the Technical Qualification Criterion specified in the RFP document and accepted the Proposal/Bid submitted by the "**Successful Bidder**" [consisting of M/s \_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_ (collectively the "**Consortium**) with \_\_\_\_\_ as its Lead Member]/ [i.e. M/s \_\_\_\_\_ (Single/ Individual Bidder)] and a Letter of Award (the "**LoA**"), bearing No. \_\_\_\_\_ Dated \_\_\_\_\_ was issued to the Successful Bidder.

- F. Accordingly, as per the terms and conditions of the RFP Document, the Successful Bidder has incorporated the Concessionaire as a Special Purpose Company in India, under the Companies Act, 1956/ 2013 to implement the Project and to fulfil other obligations of the concessionaire pursuant to the LoA. The Successful Bidder has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations of the Successful Bidder including the obligation to enter into this Concession Agreement with the Authority
- G. The Authority acknowledges that as on this day, the Concessionaire has submitted an unconditional and irrevocable revolving Bank Guarantee for a value of Rs ..... **Lakhs** (in words) as Performance Security as per the conditions specified in Article 3.2 of Part II of the RFP
- H. The Authority has agreed to the said request of the Successful Bidder and has accordingly agreed to enter into this Concession Agreement with the Concessionaire pursuant to the LoA for implementation of the Project.

**NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

## ARTICLE 1

### DEFINITIONS & INTERPRETATIONS

#### 1.1 Definitions

In this Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

**“Affected Party”** shall have the meaning ascribed to it in Article 6.1.1(a).

**“Affiliate”** means, with respect to any Party and/or with respect to the Single/ Individual Bidder and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Single/ Individual Bidder and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or Single/ Individual Bidder or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Single/ Individual Bidder or a member of Consortium whether through ownership of 50% (fifty percent) or more of the voting securities, by contract, or otherwise.

**“Agreement”** means this signed Concession Agreement (including the Schedules, Recitals of the Concession Agreement, the Letter of Award issued by Authority, the written clarifications, addendums, amendments etc to the RFP document issued subsequently to the Bidders and all other documents and papers attached as annexure).

**“Annual Concession Fee”** shall have the meaning ascribed to it in Article 2.9.1.

**“Appendix”** means any of the schedules, supplements or documents appended to this Agreement.

**“Applicable Laws”** means any statute, law, regulation, development control regulations, ordinance, notification, rule, judgment, order, decree, bye-law, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency or instrumentality thereof having jurisdiction over the matter in question, as may be in force and effect during the subsistence of this Agreement.

**“Applicable Permits”** means all clearances, permits, authorisations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or

maintained under or pursuant to Applicable Laws, in connection with implementation of the Project during the subsistence of this Agreement.

**“Appointed Date”** means the date of this Agreement.

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

**“Book Value of Additions to Transfer Assets”** means the expenditure incurred by the Concessionaire on Additions to Transfer Assets, less depreciation, as certified by the Statutory Auditor of the Concessionaire

**“Certificate of Compliance”** shall have the meaning ascribed to it in Article 2.4.1(ii).

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

**“Concession Period”** or **“Term” of the Concession Agreement** shall have the meaning ascribed to it in Article 2.7.

**“Concessionaire Event of Default”** shall have the meaning ascribed to it in Article 7.1 (a).

**“Concessionaire’s Proposal to Rectify”** shall have the meaning ascribed to it in Article 7.2 (a) (ii).

**“ Authority Event of Default”** shall have the meaning ascribed to it in Article 7.1 (b).

**“Authority Proposal to Rectify”** shall have the meaning ascribed to it in Article 7.2 (b) (ii).

**“Consortium”** means the consortium consisting of (i) Lead Member, (ii) Member 1, and (iii) Member 2 formed, to implement the Project]

**“Competent Authority”** means the concerned department, Government Instrumentality or the Authority duly empowered and authorized to grant necessary sanctions and approvals.

**“Compliance Date”** means the date falling after 60 (Sixty) days from the Appointed Date or such other date as agreed to between Authority and the Concessionaire by which time the Parties fulfill their Conditions Precedent (under Article 2.4), by the issuance of **“Certificate of Compliance”** to each other by the respective Parties / their authorized representatives.

**“Conditions Precedent”** shall have the meaning ascribed to it in Article 2.4.

**“Contractor(s)”** means a reputed Person with whom the Concessionaire has entered into or may enter into contracts / agreements for the purpose of development along with the operation and maintenance of the Project.

**“Cure Period”** shall have the meaning ascribed to it in Article 7.2 (a) (iii).

**“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Senior Lender under the Financing Documents: -

- a) The principal amount of the debt provided by the Senior Lender under the Financing Documents for financing the Project, which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Authority; and
- b) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the Para (a) above up to the date preceding the Termination Date but excluding any interest or charges that had fallen due one year prior to the Termination Date, and penal interest or charges payable under the Financing Documents to any Senior Lender.

**“Dispute Resolution”** shall have the meaning ascribed to it in Article 8.

**“Easementary Rights”** means all easements, reservations, right-of-way, utilities and other similar rights as to the use of the real property, which are necessary or appropriate for the conduct of business of the Concessionaire related to the Project.

**“Encumbrance”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

**“Existing Facilities”** shall have the meaning ascribed to it in Schedule 1A

**“Financial Assistance”** means the aggregate amount provided to the Concessionaire by way of loan, lease finance, advances, guarantees, refinancing or otherwise and other debt instruments by the Senior Lenders for the financing of the Total Project Cost (including any amendments or modifications made thereto) and for all facilities and services relating to the Project.

**“Financing Documents”** means the documents / agreements executed by the Concessionaire in respect of Financial Assistance to be provided by the Senior Lenders to the Concessionaire by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost.

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 6.

**“Commercial Operations Date”** or **“COD”** shall be the date following Project Construction Completion Date, when the Concessionaire, having procured all necessary approvals and clearances, would have fulfilled all necessary conditions to start operating all Project Facilities under Applicable Law

**“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the development, implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type and size similar to that of the Project.

**“GoI”** shall mean the Government of India.

**“Legal Entity”** shall mean anybody corporate, organization, society, trust or institution established as per the applicable laws of India, or in case of a Foreign Entity, recognized or found eligible by Government of India to enter into any commercial trade or transaction, after obtaining necessary approvals and sanctions from the Government of India in this regard, as per the applicable laws of India including national security and public interest perspective.

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

**“Material Breach”** means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

**“Movable Assets”** shall mean and include all such machines, equipment and furniture of the Project Facility, which are tangible in nature and that is movable (and not immovable like the civil structure etc), and which was owned by the Concessionaire and used as part of overall development (especially during the Operation & Maintenance) of the Project Facility.

**“Notice to Commence”** shall have the meaning ascribed to it in Article 2.4.1 (iii).

**“O&M Manual”** shall have the meaning ascribed to it in Article 2.4 (c)

**“O&M Expenses”** means expenses incurred towards Operations and Maintenance of the Project Facility/ies

**“Parties”** means the parties to this Agreement and **“Party”** shall mean either of them, as the context may admit or requires.

**“Performance Security”** means the Performance Security by way of Bank Guarantee from a scheduled bank acceptable to the Authority, as per Schedule 6, and as also ascribed to in Article 3.2.

**“Person”** unless specifically provided otherwise, shall mean any individual, company, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit.

**“Preliminary Notice to Remedy”** shall have the meaning ascribed to it in Article 7.2 (a) (ii) and Article 7.2 (b) (ii).

**“Project”** shall mean and include the following:

- (a) to renovate the Existing Facilities as per the Scope of Renovation/ Construction provided in Schedule 3
- (b) To operate and maintain the Project Facility in accordance with the O&M Manual and all relevant provisions of this Agreement
- (c) To collect User Charges in lieu of allowing use of the Project Facility or parts thereof and rendering of services at the Project Site. These services, to be provided by the Concessionaire may be in the nature of hospitality, food & beverages, event hosting, camping and water sport

**“Project Agreements”** means collectively, this Concession Agreement, the Financing Documents, Construction Agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time and any other agreements

or contract that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project.

**“Project Assets”** means all tangible and intangible assets relating to the Project / **Project Facility**.

**“Project Construction Completion Date”** – Shall be the date on which the Concessionaire completes construction of the Project and obtains all Project Milestone Completion Certificates from the Authority

**“Project Facility”** would include the Existing Facilities and the New Facilities

**“Project Milestone”** means the milestone as set out in Article 2.8.

**“Project Milestone Completion Certificate”** means the certificates issued to the Concessionaire by the Authority as described in Article 2.8 and Article 2.8.1.

**“Project Site”** shall have the meaning ascribed to it in Schedule 1A

**“Regulatory Approvals”** shall mean Governmental or regulatory approvals required by the Parties for the establishment of the Project as per the applicable laws of India.

**“Reference Exchange Rate”** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India;

**“Rupee(s)” or “INR” or “Re.”** shall mean Indian rupee(s).

**“SBI PLR”** means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India or any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.

**“Senior Lenders”** means financial institutions, banks and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting all or any part of the Total Project Cost and who hold *parri pasu* charge on the assets, rights, title and interests of the Concessionaire

**“Subordinated Debt”** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire for meeting the Total Project Cost which is subordinated to the Financial

Assistance provided by the Senior Lenders; and

- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the SBI PLR in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**“Successful Bidder”** means the Single/ Individual Bidder or the Bidder Consortium consisting of M/s \_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_ (with \_\_\_\_\_ as its Lead Member) that is finally awarded the Project and invited to enter into this Concession Agreement.

**“Termination”** means early termination of this Agreement, pursuant to Termination Notice or non-fulfilment of Conditions Precedent or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

**“Termination Date”** means the date specified in the Termination Notice as the date on which Termination occurs.

**“Termination Notice”** means the notice of Termination of this Agreement by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

**“Termination Payment”** means the amount payable by the Authority to the Concessionaire upon Termination in accordance with the provisions of this Agreement; It is agreed that within a period of 60 (sixty) days from Project Construction Completion Date, the Concessionaire shall notify to the Authority, along with a certificate from its Statutory Auditor, the Total Project Cost as on Project Construction Completion Date and its disaggregation between Debt Due, Subordinated Debt and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost.

**“Third Party” or “Third Parties”** means any Person, real or legal or Entity other than the Parties of this Agreement.

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

- (a) Total Project Cost as set forth in the Financing Documents.
- (b) Actual capital cost of the Project upon completion of the Project as certified by statutory auditor(s).
- (c) a sum of INR ..... (in words);

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Debt Due, as the case may be, in accordance with the provisions of this Agreement;

**“Transfer Assets”** shall mean both the Movable Assets and immovable assets, fully operational and functional, of the Project which are necessary or required for the performance of services and such other assets as Concessionaire procures in accordance with the provisions of this Agreement and shall specifically include all land, property and structures thereupon acquired during the term, all equipment and services, furnishings, etc. in relation to the operation of the Project, as existing on the date of Termination.

**“Transfer Date”** means the date immediately following the date of the expiry of the Term under this Concession Agreement or any earlier termination thereof in accordance with the provisions of this Agreement.

**“Users”** means all the persons who use the Project Facility or part thereof and/ or amenities, utilities, services etc at the Project Site established or provided in the Project under the provisions of this Agreement

**“User Charges”** as described in Schedule 5

**“Vacant Possession”** means delivery of the possession of the Project Site including the existing structures and development work free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto.

**“Vesting Certificate”** shall have the meaning ascribed to it in Article 7.6 (viii)

## **1.2 Interpretation**

In this Agreement, unless the context otherwise requires:

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in Uttarakhand forming part of the Union of India;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations or partnerships, organisations or other entities (whether or not having a separate legal entity);
- d. terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- f. the words "include" and "including" are to be construed without limitation;
- g. references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to a day shall mean a reference to a calendar day;
- j. any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- k. reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- l. the Schedules 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;

- m. 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;
- n. references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- o. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- p. unless otherwise stated, 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.

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

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

### **1.4 Ambiguities and Discrepancies**

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

- a. between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b. between the Articles of this Agreement and the Schedules, the Articles shall prevail, between Schedules and Appendices, the Schedules shall prevail;
- c. between the written description on the drawings and the specifications and standards, the latter shall prevail;
- d. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- e. Between any value written in numerals and that in words, the latter shall prevail.

## **1.5 Priority of Documents**

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

- i) This signed Concession Agreement
- ii) Instruction to Bidder

## ARTICLE 2

### THE CONCESSION

#### 2.1 Grant of rights to Concessionaire

- a. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and Applicable Permits, the Authority hereby authorises the Concessionaire to invest, finance, design, engineer, construct, equip, develop, commission, operate, market, maintain and manage the Project during the Term of this Agreement.
- b. For the purpose of implementing the Project, the Authority inter alia grants to the Concessionaire all the rights, powers, benefits, privileges, authorisations and entitlements, to utilise the Project Site for the purposes of the Project, and to further undertake the development, construction and improvement therein or thereon, as may be necessary or appropriate to manage the Project and to offer services and have the right to demand, collect and appropriate User Charges
- c. Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into agreements with such Persons, as it may deem necessary and appropriate, for performing its obligations under this Agreement.
- d. The Concessionaire may create an Encumbrance, with respect to its rights, in favour of Senior Lenders, only for the duration of the Concession Period strictly as per the provisions of Article 10 and 11.1(c), in part or whole, in accordance with the terms of this Agreement.

Provided that the Concessionaire shall provide written intimation to the Authority along with relevant records of the encumbrance(s) created, which shall be in strict compliance with the provisions of Article 11.1 (c).

- e. During the Concession Period, the Concessionaire shall have exclusive authority to construct, operate, maintain, market, develop and implement the Project in accordance with the provisions of this Agreement.

#### 2.2 Acceptance by Concessionaire

In consideration of the rights, privileges and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Concessionaire

hereby accepts and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

### **2.3 Transfer of Project Site**

Within 60 (Sixty) days from the Appointed Date, the Authority shall hand over the Project Site to the Concessionaire along with exclusive, unfettered and unrestricted access to it.

### **2.4 Conditions Precedent**

a. Save and except as may otherwise be expressly provided herein, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent (“**Conditions Precedent**”) as set out in Article 2.4 (b) and Article 2.4 (c) on or before the expiry of a period of 60 (Sixty) days from the Appointed Date.

#### **b. Conditions Precedent for the Authority**

The Authority shall have:

- i. Executed the License Agreement in the form attached hereto in Schedule 9 and co-terminus with this Concession Agreement
- ii. Physically secured the Project Site;
- iii. Completed the Transfer of the Project Site as per clause 2.3
- iv. Given comments/ observations (if any) to the Concept Plan submitted by the Concessionaire under Article 2.4(c)(i), within a time period of 20 (twenty) days from the date of its receipt. Failure to do so will be considered deemed approval of the Concept Plan by the Authority.
- v. Given approval to the amended Concept Plan within 10 (ten) days from the date of its receipt.

#### **c. Conditions Precedent for the Concessionaire**

The Concessionaire shall have:

- i. Executed the License Agreement in the form attached hereto in Schedule 9 and co-terminus with this Concession Agreement

- ii. Prepared and submitted to the Authority for its approval, a Concept Plan for the Project comprising preliminary project cost estimates, area statement, block drawings, details of services to be so provided, construction schedule, applicable norms and byelaws to be adhered to, an O&M Plan and a detailed O&M Manual within a period of 10 (ten) days from the Appointed Date.
- iii. Incorporated the necessary suggestions / amendments proposed by the Authority in its concept plan, within a period of 10 (ten) days from the date of receipt of such suggestions from the Authority and submitted revised concept plan for approval.
- iv. Provided the Authority copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Concession Agreement by the Concessionaire.
- v. Delivered to the Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.
- vi. Executed the Financing Agreements and delivered to the Authority, 3 (three) true copies thereof, duly attested by a Director of the Concessionaire.

#### **2.4.1 Obligations to Satisfy Conditions Precedent**

- i. Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 60 (Sixty) days of Appointed Date.
- ii. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the “**Certificate of Compliance**”).
- iii. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession shall commence and whereon the Authority shall issue the “**Notice to Commence**” to the Concessionaire.
- iv. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

#### **2.4.2 Non-fulfilment of Conditions Precedent**

- (i) In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 90 (Ninety) days of the signing of this Agreement and also, the Authority has not waived them fully or partially, or agreed to extend the time for its fulfilment, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Concessionaire or persons acting on the Concessionaire's behalf
  
- (ii) In the event that the Concessionaire has fulfilled its Conditions Precedent and Authority has not procured fulfilment of any or all of the Conditions Precedent set forth in Article 2.4 (b) within the period specified in respect thereof, the Authority shall pay to the Concessionaire damages equivalent to an amount calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day's delay until the fulfilment of the Condition Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security. In the event when the maximum damages as above has become payable and the Authority has still not been able to procure fulfilment of any or all the Conditions Precedent set forth in Article 2.4 (b) and the period for achievement of the same has not been mutually extended then the Concessionaire may Terminate the Agreement and the Authority shall return the Performance Security to the Concessionaire within 1 (one) month of issue of Termination Notice
  
- (iii) In the event of the Termination of this Agreement under Article 2.4.2 (i) due to non-fulfilment of Conditions Precedent by the Concessionaire, the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Concessionaire
  
- (iv) In the event that Vacant Possession of the Project Site has been delivered to the Concessionaire prior to the fulfilment in full of the Conditions Precedent, upon the Termination of this Agreement under any of the provisions of 2.4.2, the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

- (v) Instead of terminating of this Agreement on non-fulfilment of conditions precedent, the Parties may alternatively choose to extend the time for fulfilling the Conditions Precedent by mutual agreement.

## **2.5 Rights and Use of the Project Site**

- (i) Pursuant to Article 2.3, the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such investigations and development activities (including but not limited to bringing in construction material, clearing, shifting of utilities, landscaping and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project. However, it is being clarified here that in the event of Termination of this Agreement due to non-fulfilment of Conditions Precedent, the Authority shall have no liability to make any payment for the activities undertaken by the Concessionaire in the Project Site.
- (ii) Save and except as expressly provided under this Agreement, the Concessionaire shall not mortgage, transfer, assign or otherwise Encumber the Project Site throughout the Concession Period.
- (iii) Subject to the terms of this Agreement, the Concessionaire shall have the right to develop, create, obtain, set up, construct as the context admits or requires, and operate and maintain the Project by itself or through its Contractors.
- (iv) The Concessionaire shall have the right to use the Project Site in accordance with the provisions of this Agreement and for this purpose the Concessionaire may regulate the entry and use of the Project Site by the Third Parties.
- (v) The Concessionaire shall not without the prior written approval of the Authority use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

## **2.6 Peaceful Possession**

The Authority hereby warrants that the Project Site together with the necessary right of way has been allotted by the government through the due process of law;

**2.7 “Concession Period” or “Term” of Concession Agreement**

- a. This Agreement shall be valid and binding on the Parties throughout the period commencing from the Compliance Date till the end of 30 (Thirty) years from the Compliance Date (the “Concession Period”) and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions of this Agreement.

Provided that in the event of early Termination, the period of Agreement shall be limited to the period commencing from the Compliance Date and ending with the Termination Date.

- b. Upon expiry of the Concession Period as per Article 2.7, the Concessionaire shall peacefully surrender and yield the Project Site and the Project Facility along with Transfer Assets to the Authority in accordance with the provisions of Article 7.6 (Hand back of Transfer Assets).

**2.8 Project Milestone**

S. No.	PROJECT MILESTONE	SCHEDULED PROJECT MILESTONE COMPLETION DATE (SPMCD): TIME ELAPSED FROM THE “APPOINTED DATE”	REQUIREMENTS FOR THE ISSUANCE OF PROJECT MILESTONE COMPLETION CERTIFICATE:
(i)	Renovation of Existing Facilities	6 months	Satisfactory Report from the Concessionaire

The SPMCD for Renovation of Existing Facilities shall also be the Scheduled Project Construction Completion Date (SPCCD)

- a. In the event that a Project Milestone is not achieved prior to expiry of 30 (Thirty) days from the SPMCD, for any reason other than Force Majeure or reasons attributable to the Authority or any Government Authority, the Concessionaire shall, subject to clause below, pay to the Authority damages for delay beyond the SPMCD to the extent of 0.05% of the Performance Security per day for every day

of delay or part thereof until Project Milestone is achieved. Provided that nothing contained in this paragraph shall be deemed or construed to authorize any delay by the Concessionaire in achieving Project Milestone.

- b. In the event that Project Milestone does not occur within 90 (Ninety) days from the SPMCD, the Authority shall be entitled to invoke the Performance Security and to terminate this Agreement on account of Concessionaire Event of Default. Provided that instead of terminating the Concession Agreement, the Authority may at its sole option extend the time for achieving Project Milestone on such terms and conditions as it deem fit in its sole discretion.

### **2.8.1 Project Milestone Completion Certificate**

Upon completion of a Project Milestone, and issuance of a satisfactory report by the Concessionaire confirming completion of the Project Milestone, the Concessionaire may seek the issuance of a “**Project Milestone Completion Certificate**” upon written intimation to Authority of such completion. The Authority on its part, after detailed inspections of the Project, verification of the relevant documentation and verification of certificates issued by the competent authorities, shall promptly and in any case within 30 (Thirty) days from the date of request , either issue the Project Milestone Completion Certificate or deny the issuance thereof giving reasons

## **2.9 Consideration to Authority**

### **2.9.1 Annual Concession Fee**

- a. In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Authority or its nominee / designated recipient an Annual Concession Fee of INR \_\_\_\_\_ lakh (in words), escalated by 5% every following year.
- b. The first Annual Concession Fee payment shall be due and payable from the date of completion of 12<sup>th</sup> month, starting from the Compliance Date and accordingly, the Concessionaire shall deposit the Annual Concession Fee 7 (seven) days prior to the same date every year, throughout the Concession Period.
- c. The Annual Concession Fee shall be payable by the Concessionaire to the Authority at the Authority's or its nominee's / designated recipient's bank account at a scheduled bank (to be intimated later on) payable at Dehradun

- d. In the event of delay of more than one week in payment by the Concessionaire, the Concessionaire shall be required to pay the Authority or its nominee / designated recipient interest at the rate of SBI PLR plus 4% per annum. Delay beyond four weeks, shall be deemed to be a Concessionaire Event of Default.
- 2.9.2 In consideration of enjoying the right to use the Project Site, the Concessionaire shall pay a License Fee of INR 1/- (INR One Only) annually for the duration of the Concession Period as per the terms of the License Agreement.

## ARTICLE 3

### OBLIGATIONS OF CONCESSIONAIRE

3. In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

#### 3.1 Project Development

- a. The Concessionaire shall be required to implement the Project as per the provisions of this Agreement. The construction phase of the Project should be undertaken as per the Project Milestones defined under Article 2.8 and Project Milestone Completion Certificates should be duly obtained from the Authority

#### 3.2 Performance Security

- a. For due and punctual performance of its obligations under this Agreement, relating to the Project, the Concessionaire shall deliver to Concessions Authority and maintain Performance Security for an amount not less than equivalent to twelve (12) months' *pro rata* annual license fee in the form of a Bank Guarantee in favour of Chief Executive Officer, Uttarakhand Tourism Development Board; and the Bank Guarantee shall be prepared and submitted as per the format given in Schedule 6 of this Agreement.
- b. The Performance Security shall be from a scheduled bank or a financial institution approved by the Authority, payable at Dehradun
- c. The Performance Security shall be valid for a period of 12 (twelve) months and shall be renewed every year, at least 30 (thirty) days prior to the date of expiry of the Bank Guarantee. The renewal occurring in the last 12 months of the Concession Period shall however be for a duration such that the Bank Guarantee remains effective and enforceable up to at least 6 months beyond the date of expiry of the Concession Period. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Concessionaire. The Concessionaire undertakes and warrants to the Authority that Bank Guarantee furnished as above shall be unconditional and irrevocable and shall continue to be effective and enforceable 6 (six) months beyond the date of the expiry of the Concession Period.
- d. Upon occurrence of Concessionaire Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire

shall, within 30 (thirty) days replenish the Performance Security, in case of partial appropriation, to its original level before such encashment and in case of appropriation of entire Performance Security provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.

- e. The performance security in the form of bank guarantee shall be renewed every year during the Concession Period. If the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security shall, subject to the Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

### **3.3 Financing Arrangement, Payment of Taxes, etc.**

a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement

b) The Concessionaire shall pay all duties, taxes, levies, etc. such Import Duties, etc. towards all or any of the equipment, material, furnishings, etc. to be installed in the Project apart from taking any necessary approvals / permissions for the same.

c) The Concessionaire shall pay at its own cost all applicable, existing and future taxes / charges / fees / levies including electric bill any property tax, house tax, luxury tax, GST, stamp duty, registration charges and / or pay cost of any legal documentation charges, etc. in respect of the said Project / Project Site, as leviable.

### **3.4 Project Construction/ Renovation**

a. The Concessionaire shall complete the construction/ renovation phase of the Project in accordance with Schedule 3 and as per the Concept Plan of the Project, adhering to the Scheduled Project Milestone Completion Dates specified under Article 2.8 or such extended dates as may be approved by Authority.

b. The Concessionaire shall design the Project Facility as per the building laws / byelaws specified by the local authorities and in line with industry safety standards.

- c. The Concessionaire shall obtain all necessary approvals, permissions and sanctions for implementing the Project.
- d. The Concessionaire shall obtain “**Structural Safety Certificate**” of the Project Facility from competent, reputed and recognized “**Structural Engineer**” and furnish a copy of the same to the Authority before commencing any commercial operations pertaining to the Project Facility.
- e. The Concessionaire shall adhere to safe construction parameters and norms and complete the construction works before the Scheduled Project Construction Completion Date (SPCCD) or such extended date as may be approved by Authority. The Concessionaire shall ensure that construction/ renovation activities are performed as per Applicable Law, Industry Norms and Safety Standards
- f. The Concessionaire may undertake construction/ renovation works and services by itself or through Contractor(s) possessing requisite technical, financial and managerial expertise / capability; but in any case the Concessionaire shall remain solely responsible for its overall liabilities and obligations under the contract, overall supervision, monitoring and control of the activities of all the Contractors, sub-contractors, their employees and agents engaged under respective “**Project Agreements**” as may be necessary.
- g. The Concessionaire shall undertake all necessary construction and pre-construction activities relating to the Project, in accordance with the provisions of this Agreement and as per Good Industry Practice.
- h. For the purposes of determining whether the construction works are being undertaken as per building laws / bye-laws, development controls, relevant provisions of Indian Standards and codes, manual and guidelines issued by both State and Centre, the Concessionaire shall with due diligence carry out all necessary and periodic tests. The Concessionaire shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and shall submit copies of these to the Concessioneing Authority within one week of such tests or remedial measures being undertaken. The Concessionaire shall undertake additional tests and remedial measures as and when directed by the Concessioneing Authority and will perform these and submit reports to the Concessioneing Authority in a reasonable amount of time.

- i. The Concessionaire shall procure and install new, equipment, machinery, furniture and fixtures, air-conditioning systems and safety features in line with the Concept Plan and in accordance with Applicable Law. It shall keep all of these adequately insured and shall pay regular and timely premium, at its own cost.
- j. The Concessionaire shall make timely payment to the Authority as per the provisions of this Agreement, wherever required and applicable.
- k. The Concessionaire shall implement and make operational the Project as per the Project Milestone given in Article 2.8.
- l. The Concessionaire shall not remove any earth from the land/ Project Site until and unless the local authorities as well as the Authority have provided permission for it. In addition to this, the Concessionaire shall submit a copy of the document(s) to the Authority, wherein it has been clearly stated by the local authorities that the approval has been granted.
- m. The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.
- n. The Concessionaire shall ensure that all the Project Agreements, to be entered into with the Third Parties, are co-terminus with the Concession Period/ Term of the Concession Agreement and in case of Termination of this Concession Agreement (either by efflux of time or due to pre-mature Termination as per the provisions of this Agreement), the Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals/ benefits/ services, arising from such Project Agreements, in case they continue to accrue, shall henceforth be accrued / appropriated by the Authority. It is being clarified here that a provision capturing this clause 3.4 n. shall be mandatorily

incorporated in all the Project Agreements and the signed copy of the Project Agreements shall be submitted to the Authority for its perusal.

### **3.5 Operation and Maintenance**

- a) The Concessionaire shall operate and maintain and market the Project Facility in accordance with Good Industry Practice and Applicable Laws. The Concessionaire shall throughout the continuance of this Agreement, have full control and management of the Project.
- b) The Concessionaire would, during the course of the Concession Period, operate and maintain the Project as per the **O&M Manual**. The Concessionaire would make changes to the O&M Manual which may be suggested by the Concessions Authority from time to time for safe and smooth functioning of the Project
- c) The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability, provided that the Concessionaire shall be solely responsible for implementation and operations and maintenance of the Project in accordance with the provisions of this Agreement and it shall not be relieved of its obligations and liabilities under this Agreement in any manner.
- d) The Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the applicable regulations and Applicable Laws. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and shall submit copies of these to the Concessions Authority within one week of such tests or remedial measures being undertaken. The Concessionaire shall undertake additional tests and remedial measures as and when directed by the Concessions Authority and will perform these and submit reports to the Concessions Authority in a reasonable amount of time
- e) The Concessionaire shall be entitled at its own costs, expenses and consequences to perform the following:

- i. Institution and supervision of operating policies, principles, systems and procedures for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
  - ii. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
  - iii. To issue its receipts and invoice in its own name.
- f) The Concessionaire will take professional indemnity insurance in respect of the negligence of staff members, employees and executives, in the operation and management of the Project. The Concessionaire shall throughout the term of this Agreement maintain the professional indemnity insurance and from time to time regularly bear and pay the insurance premium in this regard.
- g) The Concessionaire shall bear and pay all expenses, taxes, due and payable in respect of the operation and management of the Project, including sales tax, GST where applicable, luxury tax and the like and will ensure that these are paid in time and no defaults are made in respect of the same. Further the Concessionaire shall ensure that all returns in this regard are filed before the due date as per Applicable Laws.
- h) The Concessionaire shall not in the operation of the Project do any act or omission which shall be unlawful in nature and throughout the term of this Agreement abide by all the laws, rules, orders, regulations and other requirements as applicable for the operation and management of the Project from time to time.
- i) The Concessionaire shall keep and maintain all such books, records and reports as are required to be maintained under Applicable Laws and shall submit or cause to be submitted to appropriate authorities, all information and reports as are legally required.
- j) The Concessionaire will furnish to the Authority such information as would be required by the Authority with respect to operation and management of the Project.

- k) The Concessionaire shall ensure safe waste disposal from the Facility. All sewerage & solid waste shall be disposed of safely as per the relevant guidelines of the State Government. The Concessionaire shall also ensure compliance of all relevant Rules and Regulations for water, air and sound pollution, as may be notified by the State Government from time to time.
- l) The Concessionaire shall ensure that adequate focus is given to saving life and property at the Facility. The Concessionaire shall maintain lifesaving equipment, first aid facilities, ambulances & other medical facilities, firefighting equipment etc. in adequate number so that any untoward incident can be taken care of immediately. Suitable signage for warning the visitors of the potential hazards should be prominently displayed at the Facility in English and Hindi. The Concessionaire should also make suitable announcements in English, Hindi and Local language over a Public Addressable system to effectively communicate safety and hazard related instructions to the visitors.
- m) The Concessionaire shall ensure that no illegal or immoral or such activities take place within the Project Site or Project Facility. The Concessionaire shall be solely responsible for ensuring that the environment of the place is not vitiated by such illegal and immoral acts of any person
- n) Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reason whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Authority indemnified in this regard.
- o) The Concessionaire will ensure that the highest service standards and good industry practices pertaining to hospitality, food & beverages and facilities of similar standing be adopted and followed in the said Project throughout the Concession Period.
- p) In the event the Concessionaire fails to operate and maintain the Project in accordance with Good Industry Practices and as per the provisions of this Agreement, a notice to that effect will be issued by the Authority to the

Concessionaire. The Concessionaire shall take all steps to address the concerns raised by the Authority in the said notice within the time period specified in the notice or in a reasonable period of time in case the time period is not specified. If the Concessionaire does not remedy any such breach in the period specified in the notice or in a reasonable amount of time if not specified, it shall be constituted as “**Concessionaire Event of Default**” in terms of the provisions of Article 7.

- q) The Concessionaire may subcontract operations pertaining to parts of the Project Facility to Third Parties, provided however, that it shall be obligatory for the Concessionaire to provide copies of all corresponding Project Agreements entered into from time to time with such Third Parties to the Authority, and that, all Project Agreements with such respective Third Parties shall include clauses that ensure the following:- (i) the period of the Project Agreement shall be co-terminus with the Term of this Concession Agreement and (ii) in case of Termination of this Concession Agreement (by efflux of time or pre-mature termination as per the provisions of this Agreement), the Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, benefits, considerations or services arising out of such Project Agreements, in case they continue to accrue, shall henceforth be accrued / appropriated by the Authority.
- r) The Concessionaire may permit/ allow and charge for advertisement/ hoarding or other commercial activity in the Project Facility as per applicable Laws, provided necessary approval is taken from the Authority.

### **3.6 Minimum Equity Requirement (Concessionaire Shareholding)**

- a) The shareholding of Lead Member of the Successful Bidder in the issued and paid up equity share capital of the Concessionaire shall at all times be not less than 51% (fifty one percent) for the duration of the Concession Period;
- b) All members of the Consortium shall together hold 100% (hundred percent) of the paid-up equity capital of the Concessionaire at all times for the duration of the Concession Period

OR (in case the Bidder is not a Consortium)

- a) The Successful Bidder shall hold 100% (hundred percent) of the paid-up equity capital of the Concessionaire for the duration of the Concession Period.
- c) The Concessionaire shall ensure that there is no change in its shareholding pattern without the prior approval of the Authority. On an application being made, the Authority may permit a change in shareholding pattern, provided that it is satisfied that the proposed changes shall be in the interest of the implementation of the Project and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the equity components / shareholding pattern shall be permitted by Authority, which would make the Concessionaire non-compliant with Articles 3.6(a) [and 3.6(b)] above.
- d) In the event of non-compliance of Article 3.6 (a), 3.6 (b) [and 3.6 (c)] above, the same shall be construed as Concessionaire Event of Default, and the Authority shall be entitled to terminate this Agreement in accordance with Article 7.

### **3.7 Insurance**

- a) At all times during the Concession Period, Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Site and Project Facility as per Good Industry Practices and required under the Financing Documents (“**Insurance Cover**”).
- b) All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 3.7 (a) shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

### **3.8 General Obligations**

The Concessionaire shall:

- a. Be solely responsible and liable vis-à-vis all regulatory aspects relating to the Project, Project Site, Project Facility, all facilities therein and all services offered by the

Concessionaire and shall indemnify the Authority with regard to any liabilities arising from these

- b. Make all payments to the Authority as per the provisions of this Agreement, as and when they become due
- c. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- d. at all times, afford access to the Project Site to the authorized representatives of Authority, Senior Lenders, other persons duly authorized by any Governmental Agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice.
- e. Perform and fulfil its obligations under the Financing Documents.
- f. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnify the Authority against any claims, damages, expenses or losses in this regard and that in no case and for no purpose shall the Authority be treated as employer in this regard;
- g. make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits from time to time;
- h. ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- i. pay all taxes, duties, levies and outgoings, including utility charges relating to the Project;
- j. not do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- k. Transfer the Project to the Authority in fully operational and functional condition upon termination of this Agreement, in accordance with the provisions thereof.

- i. Ensure that safety features, fire safety features, rescue features and medical emergency features as per standards specified by Competent Authorities as well as required under Good Industry Practice are fully functional at all times during the Concession Period
- m. Ensure the continued presence at the Project Site of trained manpower required for the safe functioning of the Project
- n. Undertake safety and fire safety drills from time to time as per Good Industry Practice and as may be specified by the Competent Authority
- o. Ensure that the quality of treated affluent solid waste, emissions etc., conform to the standards laid down by the Competent Authorities.

### **3.9 No Breach of Obligations**

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to Article 6.3;
- b. Authority Event of Default;
- c. Compliance with the directions of any Government Agency, other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder; and
- d. Closure of the Project or part thereof with the approval of the Authority.

## ARTICLE 4

### OBLIGATIONS OF THE AUTHORITY

**4.1** In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authority shall have the following obligations:-

- a. Any claims, liabilities and litigations resulting from Project Site being handed over to Concessionaire free of Encumbrances, prior to the date of issue of Notice to Commence, shall be borne solely by the Authority and it shall indemnify the Concessionaire and shall hold it harmless from any such liabilities that may arise as a result of any such transfer of the Project Site.
- b. To facilitate the Concessionaire in getting all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek under this Agreement in connection with development of the Project and the performance of its obligations hereunder;
- c. Upon written request from the Concessionaire, facilitate the Concessionaire in obtaining necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities / utilities; and
- d. The Authority shall deliver possession of the Project Site within 60 days from the Appointed Date. Failure to do so, for any reason other than Concessionaire Event of Default, shall constitute an event of default by the Authority ("**Authority Event of Default**").
- e. Upon written request from the Concessionaire, provide reasonable facilitation to the Concessionaire for the purpose of discharging its obligations under this Agreement by the Concessionaire
- f. The Authority, on its own, or through its nominee may undertake the overall monitoring of the Project Facility during the Concession Period, to verify the structural safety aspects of the Project Facility throughout the Concession Period.

ARTICLE 5

**Deleted**

## ARTICLE 6

### FORCE MAJEURE

#### 6.1 Force Majeure Event and Change in Law

6.1.1 Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event

- a) earthquake, flood, inundation and landslide
- b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- d) acts of terrorism;
- e) strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- f) action of a Government Agency having Material Adverse Effect including but not limited to
  - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Concessionaire's or the Contractor's rights in Contractor's rights under any of the Project Agreements.
  - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
  - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
  - iv. early termination of this Agreement by the Authority for reasons of national emergency, national security or the national interest.
  - v. any failure or delay of a Contractor caused by any of the events mentioned in (f) and above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
  - vi. war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination

by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

## **6.2 Obligations of the Parties**

- a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
  - (i) the nature and extent of the Force Majeure Event;
  - (ii) the estimated duration of the Force Majeure Event;
  - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
  
- b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 6.2 (a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
  - (i) assess the impact of the underlying Force Majeure Event,
  - (ii) to determine the likely duration of Force Majeure Event and,
  - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
  
- c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

### **6.3 Performance of Obligations**

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

- a) due notice of the Force Majeure Event has been given as required by the preceding Clause 6.2;
- b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility , in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

### **6.4 Termination due to Force Majeure Event**

#### **(a) Termination**

- (i) If a Force Majeure Event, is an event described under Clauses 6.1(a) to 6.1(e) and continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the

Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.

- (ii) If the Force Majeure Event is an event described in 6.1 (f) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement and if the event described in 6.1 (f) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Provided further, the Authority may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 6.1(f).

**(b) Termination Notice**

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 6.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out;

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

**(c) Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) the Termination Payment, if any, payable by the Authority in accordance with the following clause is paid to the Concessionaire on the Termination Date and

- (ii) the Project Facility are handed back to the Authority by the Concessionaire on the Termination Date free from all Encumbrance.

**(d) Termination Payment**

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by the Authority in accordance with the following:

- (i) If Termination is due to a Force Majeure Event, described under Clauses 6.1(a) to 6.1(e), no Termination Payment shall be made by the Authority to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- (ii) If Termination is due to the occurrence of any event described under Clauses 6.1(f) the Authority shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value of Additions to Transfer Assets

Provided the Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Authority from the Concessionaire as on the Termination Date.

**6.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to 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.

**6.6 Change in Law**

(a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:

- (i) the enactment of any new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

- (i) coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
  - (ii) any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
  - (iii) any change in the rates of the Central Taxes.
- (b) Upon occurrence of a Change in Law resulting in a Material Adverse Effect for the Concessionaire and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of the Change in Law the Concessionaire is obliged to incur Additional Costs, the Concessionaire may, notify the Authority of the following:
- (i) the nature and the impact of Change in Law on the Project
  - (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
  - (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost
  - (iv) the relief sought by the Concessionaire
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-clause, the Authority and the Concessionaire along shall hold discussions and take all such steps as may be necessary as to determine the quantum of relief to be provided by the Authority to the Concessionaire.
- (e) The Authority shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties. Escalation, if any, in Additional Cost after such date of determination shall not be payable by the Authority.

## ARTICLE 7

### EVENTS OF DEFAULT AND TERMINATION

#### 7.1 Events of Default

Events of Default shall mean either Concessionaire Event of Default or Authority Event of Default or both as the context may admit or requires

##### a. **Concessionaire Event of Default**

Any of the following events shall constitute an Event of Default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of one or more reasons set out in Article 6.1.1:-

- (i) The Concessionaire has failed to achieve Project Milestone and obtain Project Milestone Completion Certificate, within the time period laid down in Article 2.8;
- (ii) The Concessionaire has failed to pay the Annual Concession Fee on the respective due date
- (iii) The Concessionaire has failed to comply with the Applicable Laws / Applicable Permits or any Rules and such failure has resulted in a Material Breach of the Agreement;
- (iv) The Concessionaire has failed to implement the Project in accordance with the provisions of this Agreement and such failure, in the reasonable estimation of the Authority, is likely to result in failure in operation, maintenance or completion of project construction.
- (v) The Concessionaire has failed to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- (vi) The Concessionaire has failed to make any payments due to the Authority and more than four weeks have elapsed since such payment became due;
- (vii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 90 days;
- (viii) Any representation made or warranty as given by the Concessionaire under this Agreement is found to be false or misleading;

- (ix) A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up of the Concessionaire;
- (x) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (xi) A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (xii) The Concessionaire has abandoned the Project for a consecutive period of 10 (ten) days;
- (xiii) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xiv) The Concessionaire has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 120 days.
- (xv) The Concessionaire has created encumbrance(s) beyond the Concession Period / Term of this Concession Agreement and in violation of the provisions herein in this regard.

**b. Authority Event of Default**

Failure of Concessioneing Authority to deliver possession of the Project Site within 60 (Sixty) days of execution of this Agreement for any reason other than Concessionaire Event of Default shall constitute an event of default by Authority ("**Authority Event of Default**").

**7.2 Termination due to Event of Default**

**a. Termination for Concessionaire Event of Default**

- (i) Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority shall be entitled to terminate this Agreement in the manner as set out under Article 7.2(a)(ii) and Article 7.2(a)(iii).
- (ii) If the Authority decides to terminate this Agreement pursuant to preceding (i), it shall in the first instance issue “**Preliminary Notice to Remedy**” to the Concessionaire and within 30 (Thirty) days of receipt of the Preliminary Notice to Remedy, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “**Concessionaire's Proposal to Rectify**”). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (Thirty) days, the Authority shall be entitled to terminate this Agreement by issuing the Termination Notice.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 60 (Sixty) days (“**Cure Period**”) to remedy / cure the underlying Event of Default. If, however the Concessionaire fails to remedy / cure the underlying Event of Default within such further period allowed, the Authority shall be entitled to terminate this Agreement by issuing the Termination Notice.

**b. Termination for Authority Event of Default**

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of an Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to the preceding Clause (i), it shall in the first instance issue Preliminary Notice to Remedy to the Authority. Within 30 (Thirty) days of receipt of Preliminary Notice to Remedy, the Authority shall forward to the Concessionaire its proposal to remedy / cure the underlying Event of Default (the “**Authority Proposal to Rectify**”). In case of non-submission of Authority Proposal to Rectify within the said period of 30 (Thirty) days, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- (iii) If the Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, the Authority shall have further period of 60 (Sixty) days to remedy / cure the underlying Event of Default. If, however the Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

**c. Termination Notice**

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Sub article 7.2 (a) or 7.2(b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof; and,
- (iv) Any other relevant information.

**d. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility;
- (ii) The Project Facility and Project Site shall be transferred to the Authority by the Concessionaire on the Termination Date, free from all Encumbrances, as per the provisions of Clause 6.6 (Hand back of Transfer Assets) of this Agreement.
- (iii) The Termination Payment, if any, payable by either Party in accordance with the following sub clause (f) is paid to the Other Party on the Termination Date.

**e. Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

**f. Termination Payments**

- (I) Upon Termination of this Agreement on account of Concessionaire Event of Default, prior to the Project Construction Completion Date, the Authority shall not make any Termination Payments to the Concessionaire. In addition, the Authority shall also be entitled to forfeit and retain the Performance Security, if subsisting.
- (II) Upon Termination of this Agreement on account of Concessionaire Event of Default, the Authority shall not make any Termination Payments to the Concessionaire. In addition, the Authority shall also be entitled to forfeit and retain the Performance Security, if subsisting.
- (III) Upon Termination of this Agreement on account of Authority Event of Default, Authority shall be liable to pay compensation which shall be the higher of:
  - a) 100% of the Book Value of Additions to Transfer Assets
  - AND
  - b) Debt Dues
- (IV) All payments due to the Concessionaire as calculated under Article 7.2 (f) shall be made within 30 (thirty) days of receiving the Termination Notice.

**7.3 Rights of the Authority on Termination**

Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:

- a. Enter upon and take possession and control of the Project Facility and Project Site forthwith as per the provisions of Clause 7.6 (Hand back of Transfer Assets) of this Agreement.

- b. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Facility and Project Site;
- c. Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the transfer of the Project Site and Project Facility by the Concessionaire to the Authority shall be free from any such obligation.

#### **7.4 Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover monetary damages and other rights and remedies which it may have under law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

#### **7.5 Expiry of “Term” of Concession Agreement**

At the end of the Term of Concession Agreement as per Article 2.7, the Authority shall have the right to decide on ways and means of undertaking operations of the Project without any interference from the Concessionaire.

#### **7.6 Hand back of Transfer Assets**

Upon Termination of this Agreement for any reason whatsoever or the Expiry of Term of Concession Agreement as mentioned under Article 7.5 and consequent obligation of Concessionaire to hand over “**Transfer Assets**” to the Authority, on expiry of the Term, the Concessionaire shall ensure that on the Transfer Date its interest in:

- (i) All Movable Assets, movable property, stocks, materials, vehicles and spares forming a part of Transfer Assets shall be transferred to the Authority or its nominee, clear of any Encumbrances and with good title;

- (ii) All key documents, duly certified by the Competent Authority and concerned regulatory / licensing / accreditation / rating agency, including but not limited to the below mentioned document:
  - a. Structural Safety Certificate of the Project Facility from competent, reputed and recognized Structural EngineerShall be transferred to the Authority or its nominee, clear of Encumbrances and with good title;
- (iii) All immovable property, assets, structures, buildings, services, furnishings, edifices, court-areas, ways, walls, compounds forming a part of Transfer Assets shall be transferred to the Authority or its nominee, clear of all Encumbrances and with good title;
- (iv) The rights and obligations under or pursuant to all contracts relatable to Transfer Assets and other arrangements entered into in accordance with the provisions of this Agreement between Concessionaire and any third party shall (in consideration of the Authority's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in the Authority or its nominee, clear of all Encumbrances and with good title; and
- (v) Notwithstanding anything contained in Article 7.6 (i),(ii), (iii) and (iv), prior to any transfer of the Transfer Assets, the Authority, shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of the Authority are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to the Authority, no third Entity, including the counter-party of such contract shall have any right, license, title, interest, benefit, claim or demand against or over any Transfer Asset and such Transfer Asset shall be transferred to the Authority or its nominee, free from all Encumbrances and with good title.
- (vi) Furthermore, notwithstanding anything contained in the Article 11.1 no liability (accrued or contingent) of Concessionaire or relating to the Project Facility arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to the Authority or its nominees. The Authority or its nominees shall not be liable for liabilities in relation to the Project arising

pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to the Authority or its nominee or any Encumbrance existing on any of the Transfer Assets, the quantum of such liability and / or amount corresponding to such Encumbrance, shall be compensated by Concessionaire to the Authority.

- (vii) Without prejudice to the foregoing, Concessionaire agrees to indemnify and keep indemnified the Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Authority as a result of any actions or omissions of the Concessionaire prior to the transfer of the Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
  
- (viii) Vesting Certificate: Hand back of Transfer Assets is deemed to be complete on the date when all the requirements under Article 6.6 have been fulfilled by the Concessionaire, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 7 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that the issue of Vesting Certificate shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all requirements under this Agreement have been complied with by the Concessionaire.

## ARTICLE 8

### DISPUTE RESOLUTION

#### 8.1 Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Sub-article 8.1 (b) below.
- b. Either Party may require such Dispute to be referred to the CEO, UTDB and Chairman of Board of Directors of the Concessionaire, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any case within 30 (Thirty) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within 30 (Thirty) days of such meeting or such longer period as may be mutually agreed by the Parties. If the Dispute is not amicably settled within 30 (Thirty) days (or such longer mutually agreed period) of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 8.2 below.

#### 8.2 Arbitration

##### a. Procedure

Subject to the provisions of Article 8.1, any dispute, which is not resolved amicably, shall be finally decided by reference to arbitration under the Arbitration Act. The arbitration shall be carried out by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act.

##### b. Place of Arbitration

The place of arbitration shall be Dehradun only and the jurisdiction of the Courts of Dehradun shall prevail.

c. **English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d. **Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

e. **Performance during Arbitration**

Pending the submission of and / or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

**8.3 Adjudication by Regulatory Authority**

In the event of the constitution of a statutory Regulatory Authority with powers to adjudicate upon Disputes between the Concessionaire and the Authority, then instead of reference to Arbitration under Article 8.2, such Regulatory Authority shall adjudicate upon all Disputes arising out after its constitution, in accordance with the Applicable Laws.

**ARTICLE 9**  
**SUBSTITUTION AGREEMENT**

**Deleted**

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES

#### 10.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the information furnished in the bid / proposal 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;
- 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 the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- h. there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority including UTDB, which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- i. 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 Agency which may result in Material Adverse Effect;

- j. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- k. subject to receipt by the Concessionaire from the Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site and Project Facility shall pass to and vest in the Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or the Authority;
- l. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Agency 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; and
- m. Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire

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

The Authority represents and warrants to the Concessionaire that:

- a. The Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- b. This Agreement constitutes the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- c. It has a good and valid right over the Project Site and has power and authority to grant Concession in respect thereto to the Concessionaire; and
- d. Upon the Concessionaire paying the Annual Concession Fee and performing the covenants herein, it shall not at any time during the Term hereof, interfere with peaceful exercise of the rights and discharge of its obligations by the Concessionaire, in accordance with this Agreement.

### **10.3 Obligation to Notify Change**

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

## ARTICLE 11

### MISCELLANEOUS

#### 11.1 Assignment and Charges

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of the Authority.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement.
- c. Restraint set forth in Sub-articles 11.1(a) and 11.1(b) above, shall not apply to:
  - i. Assignment of Concessionaire's rights and benefits under this Agreement and other Project related Financial Documents to or in favour of the Senior Lenders as security for Financial Assistance provided by them.

Notwithstanding anything contained in Article 11.1 (c) the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to Transfer of Assets contained under Article 6.6.

#### 11.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest @ SBI PLR as on 31<sup>st</sup> March 2017 may be replaced to just "SBI PLR prevailing from time to time", from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 11.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### **11.3 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India. The Courts of Dehradun only shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **11.4 Waiver**

- a. 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:
  - (i) 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;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
  - (iii) Shall not affect the validity or enforceability of this Agreement in any manner.
- b. 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver / breach of any terms, conditions or provisions of this Agreement.

### **11.5 Survival**

Termination of this Agreement:

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

### **11.6 Amendments**

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by both the Parties hereto and evidenced in writing.

## 11.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the Authority:

CEO

Uttarakhand Tourism Development Board,

Pandit Deendayal Upadhyay Paryatan Bhawan, Near ONGC Helipad, Garhi Cantt.  
Dehradun

Dehradun-248001

Uttarakhand

Email: .....

If to the CONCESSIONAIRE:

“ \_\_\_\_\_ ”

\_\_\_\_\_

Fax No. \_\_\_\_\_

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time and shall be deemed to have been made or delivered.

- a. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address; and
- b. In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## 11.8 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

#### **11.9 No Partnership**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

#### **11.10 Language**

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

#### **11.11 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 and any representation by any Party not contained in a binding legal agreement executed by the Parties.

#### **11.12 Counterparts**

This Agreement may be executed in 2 counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

#### **11.13 General Liability and Indemnity**

- a. The Concessionaire shall indemnify, defend and hold the Authority harmless against any and all proceedings, actions and Third Party claims arising out of a breach by Concessionaire and its contractors, sub-contractors, agents, employees, etc. of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by the Authority of any of its obligations under this Agreement.

- b. The Authority shall, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, Third Party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Authority, its officers, servants and agents of any obligations of the Authority under this Agreement except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

For and on behalf of the Authority

Signed

by \_\_\_\_\_

For and on behalf of  
Concessionaire

Signed

by \_\_\_\_\_

In the presence of Witnesses:

- 1)
- 2)

## SCHEDULE 1

### DETAILS OF THE PROJECT SITE

The Project Site comprises of the following:

- (l) **Existing Facilities:** These include the facilities comprising the existing Watersport Resort next to Baur Jalashay on which these have been developed. The key components of the Existing Facilities are as follows:
1. Cottages: There are 6 semi-furnished cottages near the centre of the Watersport Resort. Each of the cottages comprise a sitting area, a bedroom and a bathroom
  2. Dormitory Building: the dormitory building has three enclosures/ spaces on the ground floor suitable for a restaurant, bar and game room respectively. It has 3 enclosures each on the second and third floor suitable for dormitories
  3. Swimming Pool: there are two swimming pools with a clearly marked out vacant deck area
  4. Staff Quarters Building: the staff quarters building comprises of 6 staff quarters – 4 small quarters and 2 large quarters
  5. Rock Climbing Wall: Artificial Wall
  6. Open Spaces

**SCHEDULE 2**

**CONCESSION PAYMENT**

**Not Applicable**

## **SCHEDULE 3**

### **SCOPE OF RENOVATION/ CONSTRUCTION**

The Concessionaire may make the following improvements to the Project Site

**Existing Facilities:**

- I. Dormitory Building, Staff Quarters and rooms/ enclosures therein as well as the cottages may be renovated/ refurbished/ furnished and be made ready for commercial use
- II. Other facilities such as the swimming pool, deck area and rock-climbing wall may be refurbished/ equipped in order to bring them into commercial use
- III. Open spaces may be beautified

## **SCHEDULE 4**

### **OPERATION AND MAINTENANCE MANUAL**

**To be finalised as part of the Concept Plan and amended from time to time as per suggestions of the Concessions Authority**

## **SCHEDULE 5**

### **SERVICES TO BE OFFERED AND USER CHARGES**

Services to be offered: The Concessionaire may offer services pertaining to the Project Facility which would be broadly in the natures of hospitality, food & beverages, event hosting etc.,

User Charges: The Concessionaire may charge Users of the Project Facility on a commercial basis for the use of the Project Facility and for the above services offered

**SCHEDULE 6**

**FORMAT OF PERFORMANCE SECURITY**

**(BANK GUARANTEE)<sup>1</sup>**

**PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE**

Bank Guarantee No.: \_\_\_\_\_

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

**Issuer of Bank Guarantee:**

\_\_\_\_\_ (Name of the Bank)

\_\_\_\_\_

\_\_\_\_\_

(Hereinafter referred to as the “Bank”)

**Beneficiary of Bank Guarantee:**

UTDB

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.

**Context of Bank Guarantee**

Performance in respect of Concession Agreement (hereinafter referred to as the “Agreement”) to be entered between the Uttarakhand Tourism Development Board (hereinafter referred to as the “Authority”) and \_\_\_\_\_ (hereinafter referred to as the “Concessionaire”) for .....on Design Build Finance Operate Transfer (DBFOT) basis at ....., ..... (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Performance Bank Guarantee” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

\_\_\_\_\_ <sup>1</sup> To be issued by a Scheduled Bank in India

**Operative part of the Bank Guarantee:**

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

tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_

Notwithstanding anything contained herein:

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

\_\_\_\_\_

Authorized Signatory

For

Bank

**SCHEDULE 7**

**VESTING CERTIFICATE**

1. UTDB (the "**Authority**") refers to the Concession Agreement dated \*\*\* (the "**Agreement**") entered into between the Authority and \*\*\*\* (the "**Concessionaire**") for Operation, Maintenance of .....on Public Private Partnership (PPP) basis.
  
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the requirements set forth in Article 6.6 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever.
  
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the requirements under the Agreement and/or relieving the Concessionaire in any manner of the same

Signed this \*\*\* day of \*\*\*, 2021 at [\*\*\*].

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of

CONCESSIONAIRE by:

AUTHORITY by

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

**SCHEDULE 8**

Deleted

## SCHEDULE 9

### License Agreement

(See Article .....)

This License Agreement is executed at -----(*insert name of place*), on this the \_\_\_\_ day of \_\_\_\_\_;

#### B E T W E E N

\_\_\_\_\_ (*Name of the Concessionaire*) (hereinafter referred to as the **“Licensor”** (which expression unless it be repugnant to the context or meaning thereof shall mean and include their respective heirs, legal representatives, administrators, executors and assigns) of the **FIRST PART**

#### A N D

\_\_\_\_\_ (*Name of the person who is being given the sub-licence*) hereinafter referred to as the **“Licensee”** (which expression unless it be repugnant to the context or meaning thereof shall mean and include its successors and assigns) of the **SECOND PART**

Capitalized terms used in this Agreement, but not defined shall have the meaning assigned to them in the Concession Agreement.

#### WHEREAS

- A. The Licensor is the Concessionaire under the Concession Agreement dated \_\_\_\_\_ (**“the Concession Agreement”**) entered into between Uttarakhand Tourism Development Board, (**“UTDB”**) and the Concessionaire.
- B. The Licensor has been granted, inter alia, the right to enter into License Agreements with suitable Persons in respect of the Additional Facility (Name of the Facility.....), subject to the terms set forth in the Concession Agreement.
- C. Pursuant to the rights granted to the Licensor as aforesaid, the Licensor has agreed to give on license basis to the Licensee, the Licensed Premises No. \_\_\_\_\_ more particularly described in Appendix hereto (**“the Licensed Premises”**) for a period of \_\_ years with effect from \_\_\_\_\_ up to \_\_\_\_\_, at a License Fee of INR \_\_\_\_\_ per month, for use by the Licensee of the Licensed Premises in accordance with the terms of this Agreement and in accordance with applicable laws;

#### NOW THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Licensor does hereby grant and the Licensee does hereby accept the license to use, occupy and enjoy the Licensed Premises for a term of \_\_\_\_ years commencing from \_\_\_\_\_ up to \_\_\_\_\_ (**“the License Period”**), subject to the terms and conditions hereinafter set out. The term of the License could be renewed/ extended for a further period and on such terms as may be mutually agreed between the parties.
2. The Licensee shall pay to the Licensor, a License Fee of INR \_\_\_\_\_ per month (**“the License Fee”**) during the License Period.
3. The License Fee shall be payable monthly in advance, on or before the seventh day of each month.

4. The Licensee shall pay to the Licensor an amount equal to \_\_\_\_\_ months License Fee as an Advance i.e. INR \_\_\_\_\_ (“**Advance**”). The Licensor agrees to return the Advance to the Licensee upon termination of this Agreement, after adjusting any amounts that may be due to the Licensor.
5. The Licensor shall make available adequate facilities for maintenance of cleaning of the common areas such as corridor, staircase, toilets, elevators, parking area.
6. The Licensor shall be responsible for the maintenance of all the common areas in the Additional Facility. All cost related to maintenance as aforesaid, would be borne by the Licensor. The Licensor agrees to promptly rectify all defects in the common areas etc. brought to its notice.
7. The Licensee shall not do or suffer to be done anything in the Licensed Premises, which is or is likely to be a nuisance or annoyance to the other occupants of the Additional Facility or to prejudice the rights of the Licensor of the Licensed Premises under the Concession Agreement.
8. The Licensee shall take due and proper care of the Licensed Premises and shall be liable to compensate the Licensor for any loss or damage to the Licensed Premises, save and except for reasonable wear and tear. The Licensee shall not carry out any change in the Licensed Premises, without the prior written of the Licensor.
9. The Licensee declares, agrees and is aware that this Agreement does not create any right, title to or in the Licensed Premises in favour of the Licensee, save and except a limited right to use, occupy and enjoy the Licensed Premises during the term of this Agreement. Further, the Licensee shall not sub-let the Licensed Premises to any party.
10. The Licensee shall be liable to keep the Licensed Premises in good habitable condition and keep the Licensed Premises at his own cost adequately waterproofed and carry out such repairs as may be required from time to time and as called upon to do by the Licensor.
11. The Licensee does hereby indemnify and undertake to keep indemnified the Licensor from all damages, claims, liabilities arising out of or as a consequence of any action taken or penalty imposed by any Person or authority on account of use of the Licensed Premises by the Licensee under this Agreement, which action may include an attachment, restraint or any other proceedings.
12. The Licensor shall pay the applicable taxes, cess, levies, etc., in respect of the Licensed Premises.
13. In the event of either party committing breach of any of the terms and conditions of this Agreement and failing to remedy or make good such breach within 30 days of the receipt of notice in writing from the other party, such other party shall be entitled to revoke this Agreement by giving the other party a notice of 15 days in writing, without payment of any compensation whatsoever.
14. In the event of not requiring the Licensed Premises, the Licensee shall be entitled to terminate this Agreement by giving three months’ notice in writing to the Licensor or three month’s Licensee Fee in lieu thereof.
15. In an unlikely event of unforeseen circumstances, which may render difficult for the Licensee to occupy the Licensed Premises, the Licensee shall be entitled to terminate the License by giving one-month notice to the Licensor. Similarly, in an unlikely event of unforeseen circumstances, which may render difficult for the Licensor to give or

continue on license basis the Licensed Premises, the Licensor shall be entitled to terminate this Agreement by giving one-month notice to the Licensee.

16. The Licensee hereby expressly agrees that this Agreement shall automatically and simultaneously terminate upon termination of the Concession Agreement, for any reason whatsoever including default of the Licensor thereunder, and that the Licensee shall not have any rights whatsoever against the Licensor/UTDB, including compensation or termination payment which the Licensor/UTDB may be entitled to receive under the Concession Agreement. Upon termination of the Concession Agreement between UTDB and Concessionaire/Licensor, UTDB shall have right to enter upon and take possession of the property.
17. Upon termination of this Agreement for any reason, the Licensee shall remove all objects and persons using the Licensed Premises at the cost of the Licensee and deliver vacant and peaceful possession of the Licensed Premises therein to the Licensor in a good condition, normal wear and tear excepted.
18. Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

If to First Party:

The ,  
-----,  
-----  
-----.  
Fax No. -----.

If to the Second Party

The ,  
-----,  
-----  
-----.  
Fax No. -----.

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

19. Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.
20. **Settlement of Disputes:**
- 20.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, shall in the first instance be attempted to be resolved amicably by meetings between the Parties.
- 20.2 In the case of dispute arising upon or in relation to or in connection with the contract between the Client and the Consultant, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996 and subsequent amendments from time to time. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by the Client and the Consultant, the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the President of Indian Council of Arbitration. The Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings.
- 20.3 Arbitration proceedings shall be held in India at the place indicated in SC and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.
- 20.4 The decision of the majority of arbitrators shall be final and binding upon both parties. The expenses of the arbitrators as determined by the arbitrators as per the Act and shall be shared equally by the Client and the Consultant. However, the expenses incurred by each party in connection with the preparation and presentation shall be borne by the party itself. All arbitration awards shall be in writing and shall state the reasons for the Award.
- 20.5 Pending the submission of and/or decision on a dispute, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such arbitration award.
- 20.6 This Agreement shall be governed by the laws of India and courts of the District Headquarters, Dehradun will have jurisdiction relating to all matters arising from this Agreement.
- 20.7 This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

**APPENDIX**  
**(Licensed Premises)**

IN WITNESS WHEREOF the parties have subscribed their respective hands hereunto on the day, month and year first herein above written.

SIGNED AND DELIVERED by the Licensor by the hand of _____ in the presence of	
1. _____	
2. _____	
SIGNED AND DELIVERED by the Licensee by the hand of _____ in the presence of	
1. _____	
2. _____	

**RECEIPT**

Received from \_\_\_\_\_ an amount of INR \_\_\_\_\_ (in words) as Advance as mentioned in Clause 4 of the License Agreement.

Date:

Place: -----(*insert name of place*)

**SCHEDULE 10**

**Not Applicable**