

REQUEST FOR PROPOSAL

FOR

SELECTION OF SERVICE PROVIDER FOR OPERATION OF ELEVATORS / ESCALATORS IN SHIMLA ON PUBLIC PRIVATE PARTNERSHIP (PPP) MODE

March, 2024

ISSUED BY:

Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd.
U.S. Club, Shimla , Himachal Pradesh



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DISCLAIMER

1. The information contained in this **Request for Proposal** document (the “**RFP**”) or subsequently provided to bidder(s), whether verbally or in documentary or any other form, by the **Ropeways and Rapid Transport System Development Corporation H.P. Ltd. (RTDC)** (the “**Authority**”) or any of its employees or advisors, is provided to bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
2. This RFP is not an agreement and is neither an offer nor invitation by the RTDC on behalf of the Authority to the prospective bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Bid for qualification pursuant to this RFP.
3. This RFP includes statements, which reflect various assumptions and assessments arrived at by the RTDC/ Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each bidder may require.
4. This RFP may not be appropriate for all persons, and it is not possible for the RTDC/ Authority, its employees, or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.
5. Information provided in this RFP to the bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The RTDC / Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
6. The RTDC/ Authority, its employees and advisors make no representation or warranty and shall have no liability towards any person, including any bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with qualification of bidders for participation in the Bidding Process. The RTDC/ Authority also accept no liability of any nature whether resulting from negligence or otherwise, howsoever, caused arising from reliance by any bidder upon the statements contained in this RFP.
7. The prospective bidders are hereby informed that the elevators /escalators would be handed over to the Operator on as-is-where-is basis.
8. The Authority may, in its absolute discretion but without being under any obligation to do so, through RTDC, update, amend or supplement the information, assessment or assumptions contained in this RFP.

9. The issue of this RFP does not imply that the RTDC/ Authority is bound to select or to appoint the Selected bidder or Operator, as the case may be, for the Project and the RTDC/ Authority reserves the right to reject all or any of the Bid or Bids without assigning any reasons whatsoever.

10. The bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the RTDC/ Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the bidder and the RTDC/ Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Associate	As defined in Clause 2.2.7
Authority	As defined in Disclaimer
Bid Due Date	As defined in Clause 1.1.4
Bidder	As defined in clause i of NIB
Bid Security	As defined in Clause 1.2.6
Bid Validity Period	As defined in Clause 1.2.5
Bidding Documents	As defined in Clause 1.1.6
Bidding Process	As defined in Clause 1.2.1
Conflict of Interest	As defined in Clause 2.2
Consortium	As defined in Clause 2.2.4
Estimated Project Cost	As defined in Clause 1.1.1
Financial Capacity	As defined in Clause 2.2.1
RTDC	Ropeways and Rapid Transport System Development Corporation H.P. Ltd.
GoHP	Government of Himachal Pradesh
Joint Bidding Agreement	As defined in Clause 2.2.4
Lead Member	As defined in Clause 2.2.4
LoA	Letter of Award
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.2
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Rs. or INR	Indian Rupee
RFP	As defined in the Disclaimer
Technical Capacity	As defined in Clause 2.2.1

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

NOTICE INVITING BIDS

- i. Ropeways and Rapid Transport System Development Corporation H.P. Ltd. (“RTDC”), the nodal agency for implementation of Public Private Partnership (PPP) Projects in the State (the “Authority”) invites proposals (the “Bid(s)”) from interested entities (the “Bidder” or “Bidders”, as the context may require) to submit their Bids for “**Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode**” (the “Project”).
- ii. This RFP is for the Operation of elevators / escalators being installed at three locations- Jakhoo Temple, Vikas Nagar and Middle Bazar.
- iii. The capacity and load capacity of the three locations are as below:

S.No.	Location	Escalator/ Elevator	Capacity
1.	Jakhoo Temple	Escalator- 4	100 People per minute
2.	Vikas Nagar	Elevator – 3	20 People per trip
3.	Middle Bazar	Elevator – 1	20 People per trip

- iv. The Operator shall undertake the Operation of elevators / escalators at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazar in accordance with Section 7 of this RFP and shall also be responsible for collection of the user fees / tickets from commuters of the elevators / escalators over the Operation Period of 5(five) extendable further at the sole discretion of the Authority subject to the terms and conditions and provisions as stipulated in the Operation Agreement.
- v. The Project site shall be given on ‘**as-is-where-is basis**’.
- vi. The Authority is now desirous of selecting a Bidder (the “**Selected Bidder**”) through competitive bidding by quoting the highest Annual Fixed Fees in accordance with the procedure set out herein under this RFP who shall Operate the Project for a pre-determined Operation Period as mentioned in this RFP.
- vii. The Operator shall be responsible for Operating the entire project facilities in pursuance of the terms and conditions of the Operation Agreement and providing facilities as per the Acts, Rules and Guidelines applicable as per, Government of Himachal Pradesh, as amended from time to time.
- viii. It is to be noted by the Bidders that the Operator shall have the right to determine the tariff / user fees per trip to be charged from the commuters of elevators / escalators.
- ix. The Bidder may be an individual entity or a consortium of entities not exceeding 3 (three) in number.
- x. Complete Bidding Document comprising of the Request for Proposal Document (including ITB), Draft Operation Agreement and Schedules to Draft Operation Agreement can be downloaded from www.rtdchp.org. The Bidders are required to make a payment of **Rs. 10,000/- (Rupees Ten Thousand Only) +Applicable 18% GST**, as the cost of Bidding Documents to RTDC in the form and manner mentioned in this RFP.

- xi. The Bids must be submitted at the office of RTDC, Shimla in the manner as set out in the RFP.
- xii. In case Bidders require any further information about the Project or need access to any other documents related to the Project, as available with the Authority or wish to visit the Project Site, they are requested to contact the following person at the addresses given below, however, the cost of the visit shall be borne by the Bidders :

The Deputy General Manager
Ropeways and Rapid Transport System
Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001
Phone No.: 0177-2811001, 2811003, 2811004
Email : dgmrtldchp@gmail.com

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

RTDC /Authority shall not be responsible for any costs or expenses or liabilities incurred by the Bidders in connection with the preparation and delivery of Bids, including costs and expenses related to the visits to the Project Site. RTDC reserves the rights to cancel, terminate, change or modify this procurement process and/or requirements of bidding stated in the RFP, at any time without assigning any reason or providing any notice and without accepting any liability for the same.

- xiii. The Bids received in response to this invitation/ RFP shall be evaluated based on the Eligibility Criteria specified in this RFP document.

1. INTRODUCTION

1.1 Background

1.1.1 The RTDC aims to enhance connectivity to unexplored new places of tourist interest in the state to boost tourism potential in the near future.

RTDC will also work towards providing all-weather connectivity to tribal areas which remain cut-off during the winter. The project is in line with the objects of the authority and the Shimla Smart city plan. RTDC has developed elevators / escalators at the following locations:

Elevators :

- Lakkar Bazar Bus Stand to Ridge (Tibetan Market)
- Police Chowki Lakkar Bazar to Auckland Tunnel
- Vikas Nagar
- Middle Bazar

Escalator:

- Jakhoo Temple

The RTDC intends to select Service Provider for Operation of elevators / escalators in Shimla (Project). This RFP is for Phase-I i.e. three locations – Jakhoo Temple , Vikas Nagar and Middle Bazar.

Phase – II of the project shall be for elevators at Lakkar Bazar Bus Stand to Ridge (Tibetan Market) and Police Chowki Lakkar Bazar to Auckland Tunnel, RFP for the same shall be issued later.

The selected service provider/ operator shall have the first right of refusal for Phase-II of the project.

Name of the Project	Operation Period
Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode.	5 (Five) years, extension at the discretion of the Authority.

Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd. is a company registered under Companies Act, 2013 with its headquarters at Shimla. The company is fully owned by the Government of Himachal Pradesh.

RTDC aims to decongest major urban hubs in the state such as Shimla, Dharamshala, Manali and rest of Himachal Pradesh by devising innovative transport solutions.

1.1.2 The scope of work will broadly include Operation thereof in terms of Section 7, Terms of Reference and the Operation Agreement. The Operator shall take over of the Project Site on “as is where is basis”, Operate, provide relevant assets, equipment, facility, clearances/approvals, providing ancillary services and amenities related to the Project Facilities conforming with relevant guidelines, rules and regulations and as per the guidelines of Government of Himachal Pradesh as amended from time to time and the terms of the Operation Agreement and Schedules hereof. After the completion of the Operation Period or earlier Termination, as the case may be, the Project Assets along with all facilities and infrastructure including all movable and immovable assets, existing as well as created or provided, as the case may be, by the Operator shall be handed over to the Authority.

- 1.1.3 The Selected Bidder (the “**Operator**”) shall be responsible for Operation of the Project under and in accordance with the provisions of the Operation Agreement (the “**Operation Agreement**”) to be entered into between the Selected Bidder / Operator and the Authority in the form provided by the Authority as part of the Bidding Documents.
- 1.1.4 RTDC shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by RTDC, and all Bids shall be prepared and submitted in accordance with such terms on or before the due date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.1.5 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of work and obligations of the Operator to be set forth in the Operation Agreement or RTDC’s rights to amend, alter, change, supplement or clarify the scope of work and the license to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by RTDC.
- 1.1.6 RTDC shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP, to be set forth in the Operation Agreement and other documents that are provided or may be provided by RTDC, as modified, altered, amended and clarified from time to time by RTDC (collectively the “**Bidding Documents**”).

1.2 Brief Description of Bidding Process

- 1.2.1 RTDC has adopted a single-stage two-cover system bidding process for selection of the Bidder for award of the Project. All Bidders for the Project shall simultaneously submit their relevant qualification details for the purpose of meeting Technical Qualification Criteria comprising of Technical Capacity and Financial Capacity conditions (“**Technical Bid**”) and bid price quoting the **Annual Fixed Fee** (the “**AFF**”) exclusive of all applicable taxes and GST payable to the Authority as mentioned in Clause 3.5.1 (“**Bid Price**”) to RTDC in accordance with the terms set forth in the RFP (the “**Financial Bid**”). The AFF shall increase at the rate of 5% every year. The initial Annual Fixed Fee (AFF) shall be paid by the Selected Bidder upon commencement of the contract, followed by subsequent payments on a semi-annual basis from next financial year. The first installment of AFF for subsequent year shall be on the first day of each financial year, which occurs on the 1st of April and second installment of AFF on the 1st of October, or on the succeeding working day in the event of a holiday.
- 1.2.2
- 1.2.3 In the first step, Technical Bid of all Bidders shall be evaluated as to whether they are responsive in terms of Clause 2.19 and meet the Technical Qualification Criteria as set forth in Clause 2.2.1 of this RFP for undertaking the Project. The Financial Bids of only those Bidders who are considered responsive in Technical Qualification Criteria (the “**Qualified Bidder(s)**”) will be opened and evaluated for the purpose of identifying the Selected Bidder for the Project in accordance with Section 3.
- 1.2.4 Bids have to be submitted in Physical / Hard Copies at the office of RTDC latest by the dates as specified in Section 1.3, and as per procedure laid down in Section 2.11 to 2.15.

Bid submitted through any other mode shall not be entertained. The Instructions to Bidders (ITB) of the RFP document can be downloaded from the website www.rtdchp.org Complete Bidding Document comprising of the Request for Proposal Document (including ITB), Draft Operation Agreement and Schedules to Draft Operation

Agreement shall be downloaded from the www.rtdchp.org. Bid Document Fee of **Rs. 10,000/- (Rupees Ten Thousand Only) + Applicable 18% GST**, made through RTGS/NEFT mode using the System Generated Challan i.e. in favour of “ROPEWAYS & RAPID TRANSPORT SYSTEM DEVELOPMENT CORPORATION HP LIMITED” in the A/c No. 50100297437422 IFSC Code: HDFC0000524, HDFC the Mall Shimla.

The scanned copy of RTGS/NEFT receipt with UTR No.(Transaction ID) must be enclosed along with Bid. Bidder should ensure that the payment of the Bid processing fee is made at least 3-5 working days prior to the last date of Bid Preparation and Submission of the Tender Schedule to have seamless submission Further, RTDC reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the schedule shall stand modified and amended.

- 1.2.3 The Bidders would be required to furnish information specified in this RFP. The Bidders are requested to visit the Project Site to familiarize themselves with the Project at this stage itself. The Bidders interested in visiting the Project Site are requested to contact RTDC. The cost of Project Site visit shall be borne by the Bidders.
- 1.2.4 The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the date specified in the RFP for submission of Bids (the “**Bid Validity Period**”).
- 1.2.5 In terms of this RFP, a Bidder will be required to deposit, along with its Bid, a bid security for an amount of **Rs. 1 Lakh (Rupees One Lakh Only)** (the “**Bid Security**”), refundable no later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security pursuant to the provisions of the Operation Agreement. The Bidders shall provide Bid Security in the form of a Demand Draft from any Nationalized Bank / Scheduled Commercial Bank in favour of Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), payable at Shimla or a Bank Guarantee acceptable to the RTDC. If Bid Security is provided in the form of Bank Guarantee then the same shall be valid for a period not less than 180 days (One hundred and Eighty) days from the Bid Due Date for which claim period shall be of atleast 60 (Sixty) days. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security should be submitted along with the Technical Proposal. The format of the bank guarantee has been given in Appendix – V.

1.3 Schedule of Request for Proposal (RFP) Process

The Authority shall endeavor to adhere to the following schedule:

S. No.	Event/ Activity Description	Target date/time period
1.	Issuance of Request for Proposal Document (RFP)	06.03.24, 17:00 hours onwards
2.	Last date of receipt of Pre-Bid queries on dgmrdchp@gmail.com with subject : “Queries	12.03.24, 11:00 hours

	Concerning - Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode"	
3.	Pre Bid Conference to be held at The Deputy General Manager Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), US Club, Shimla – 171001/ Online link to be shared with interested bidders	13.03.24, 17:00 hours
4.	Response to Pre Bid queries	19.03.24, 11:00 Hours
5	Bid Submission Bids should be submitted in physical form to: The Deputy General Manager Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), US Club, Shimla – 171001	27.03.24, 12:00 Hours
6.	Opening of Technical Proposal	27.03.24, 15:00 Hours
7.	Announcement of qualified Bidders	To be intimated separately to the qualified bidders
8.	Opening of Financial Proposal	To be intimated separately to the qualified bidders
9.	Issuance of Letter of Award to the Selected Bidder	To be intimated separately to the selected bidder
10.	Signing of the Operation Agreement	Within 15 days of Issuance of Letter of Award

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General Terms of Bidding

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

2.2 Eligibility of Bidder

- i. The Bidder may be a single entity OR a group of entities not exceeding 3 (three) members coming together to implement the Project (the “**Consortium**”). However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term ‘Bidder’ used herein would apply to both a single entity and a Consortium.
- ii. A Bidder may be an Individual, Sole Proprietorship, Partnership firm, LLP under the Limited Liability Partnership Act, 2008 or a Company (Public or Private Ltd.) incorporated under the Companies Act 1956/2013 or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. All the entities shall be required to submit proof of their statutory registration/ incorporation as per their respective governing Statutes/ Acts. Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2 (iii) (f) below.
- iii. The Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have Conflict of Interest shall be disqualified. The Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - a) The Bidder, its 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 the Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the subscribed and paid up equity 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% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial

institution referred to in Section 72 of the Companies Act, 2013. For the purposes of Clause 2.2, indirect shareholding held through one or more intermediate persons shall be computed as follows: (a) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (b) subject always to sub-clause(a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub- clause (b) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; a constituent of such Bidder is also a constituent of another Bidder; or

- b) Such Bidder, or any Associate thereof, receives or has received any direct or indirect subsidy, grant, operational loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, operational loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- c) Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- d) Such Bidder, or any Associate 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 Bid of either or each other; or
- e) Such Bidder or any Associate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- f) Bidder shall be liable for disqualification if any legal, financial or technical adviser of RTDC 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 twelve months from the date of completion of Bid submission.

iv. In case a Bidder is a Consortium, then the term Bidder as used in this clause, shall include each Member of such Consortium.

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

A. General Experience:

- i. The bidder should have minimum 3 years' experience since its registration in Operation / Maintenance / Management/ Construction /Development / Management of Hotels / Resorts or Tourism Industry / Hospitality / Book Cafes/ Cafes / Real Estate sector / various entertainment facilities across public and private sectors .
- ii. The bidder should have a valid GST and PAN number
- iii. The bidder shall be ineligible if he has been debarred or blacklisted by any Central / State Government Department / Board / Corporation in India. An undertaking / Affidavit in respect of this shall be enclosed.

B. Technical Capacity: During the last 3 (three) years, the bidder shall have:

- i. Experience in Operation / Maintenance / Management/ Construction /Development / Management of Hotels / Resorts or Tourism Industry/ Hospitality / Book Cafes/ Cafes / Real Estate sector / various entertainment facilities across public and private sectors; of Project Cost more than **Rs. 1 Crores** (Rupees One Crore Only).

Where, hospitality / tourism / real estate sector projects shall mean restaurants, bars, cafeterias, food courts, malls, banquet halls, convention centres, cultural centres, heritage properties, amusement parks and theme parks etc.

Note: Ongoing projects shall also be considered as eligible projects, for calculation of Technical capacity. Letter of Award (LOA) from the client shall be required to be submitted in support of the claim.

C. Financial Capacity:

- i. The Bidder shall have Turnover of **Rs.30 Lakhs (Rupees Thirty Lakhs only)** at the closing of the preceding Financial Year before the Bid Due Date.
- ii. The bidder must have **positive Net-worth** for last 3 Financial Years.

Note :Documentary evidence in the form of CA Certificate as well as copies of ITRs and Financial Statements must be furnished along with the Technical Proposal to substantiate its claim.

- iii. In case of a Consortium, the combined Technical and Financial Capacity of all Members would be considered for evaluation who shall undertake to continue to hold 100% of subscribed and paid up equity share capital in the bidder with lead member holding atleast 51% of subscribed and paid up equity share capital of the bidder until the 5th Anniversary of COD of the project and further not less than 51% of subscribed and paid up equity share capital till the end of Operation Period with Lead Member holding atleast 26% of subscribed and paid up equity share capital , failing which the agreement may be terminated at the sole discretion of the Authority; provided further that all the members of the Consortium shall be jointly and severally liable for all the obligations in respect of the Operation Agreement.

2.2.2 The Bidders shall enclose with its Bid, to be submitted as per the format at **APPENDIX I** complete with its Annexes, the following:

- i. Certificate(s) from Statutory Auditors of the Bidder or its practicing Chartered Accountants, Associates or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 3 (three) years in respect of the projects specified in Clause 2.2.1 (B) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its Statutory Auditor or the client; and
- ii. Certificate from Statutory Auditors /practicing Chartered Accountant of the Bidder or its Associates specifying the Turnover and Net Worth of the Bidder, as at the close of the preceding Financial Year, and also specifying that the methodology adopted for calculating such Net Worth confirms to the provisions of this Clause 2.2.2(ii) of the RFP.

For the purposes of this RFP, Net worth(the “**Net worth**”) shall mean:

- a. In case of Bidder being a Company: the sum of subscribed and paid up Equity Share Capital and Reserves & Surplus. Sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders and accumulated losses shall be deducted from Reserves & Surplus.
- b. In case of Bidder being a Partnership Firm/ LLP: [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]
- c. In case of Bidder being a Sole Proprietorship/ Individual*: Total Assets- Total Liabilities

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

2.2.3 The Bidder should submit a Power of Attorney as per the format prescribed under Appendix-II, authorizing the signatory of the Bid to commit the Bidder. The Power of Attorney should be supported by a Board Resolution confirming the Authorized Signatory. In the case of a Consortium, the Members should submit a Power of Attorney in favor of the Lead Member as per format prescribed under Appendix-III.

2.2.4 In case the Selected Bidder is a Consortium, it shall, comply with the following additional requirements:

- i. Number of members in a Consortium shall not exceed 3 (three);
- ii. The Bid submitted by the Consortium should contain the information required for each Member of the Consortium;
- iii. Members of the Consortium shall nominate 1 (one) Member as the lead member (the “**Lead Member**”), who shall have a minimum share of at least 51% (fifty-one per cent) in the Consortium / SPV, as the case may be. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Consortium; the other members (the “**Other Member**”) shall hold remaining share in the Consortium / SPV.
- iv. The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- v. an individual Bidder cannot at the same time be Member of a Consortium applying for the Bid; and

- vi. Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form **specified under** Appendix-IV (the “**Joint Bidding Agreement**”). The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
 - a. convey the intent to form a Consortium / shareholding commitment(s) in accordance with this RFP, which would enter into the Operation Agreement and subsequently perform all the obligations of the Operator in terms of the Operation Agreement, in case the operation to undertake the Project is awarded to the Consortium;
 - b. clearly outline the proposed roles and responsibilities, if any, of each Member;
 - c. commit the minimum share / equity stake to be held by each Member;
 - d. commit that each of the Members, whose Technical and Financial Capacity will be evaluated for the purpose of this RFP, shall be part of the Consortium with Lead Member holding 51% share in the Consortium/ subscribing to minimum 51% of the subscribed and paid up equity share capital of the SPV and shall further commit that all such Members shall jointly, for a period until the 5th Anniversary of COD of the project, continue to be part of the Consortium;
 - e. Members of the Consortium undertake that they shall collectively hold subscribed and paid-up equity shareholding of 100% (one hundred percent) in the Operator until the 5th Anniversary of COD of the project and further not less than 51% of subscribed and paid up equity share capital till the end of Operation Period with Lead Member holding atleast 26% of subscribed and paid up equity share capital and
 - f. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project until the fifth anniversary of the commercial operations of the Project is achieved in accordance with the Operation Agreement.
- vii. The Lead Member shall be authorized by all members of the Consortium to incur liabilities and receive instructions for and on behalf of any and all Members of the Consortium;
- viii. In case the Consortium is selected as the Selected Bidder, the Lead Member along with other Consortium members shall be jointly and severally liable for the execution of the Project in accordance with the terms of the RFP;
- ix. Any change in the Member(s) of Consortium after submission of the Bid shall result in disqualification of the Bidder; and;
- x. The Bid shall be legally binding on all the members of the Consortium
- xi. Except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of RTDC.

2.2.5 Any entity (the Bidder, its Member, or Associate was, either by itself or as member of a consortium) which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.2.6 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate nor the Bidder, Consortium Member or Associate shall have paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract. Provided, however, that where a Bidder claims that its disqualification

arising on account of any cause or event specified in this Clause 2.2.6 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to RTDC for seeking a waiver from the disqualification hereunder and RTDC may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.7 In computing the Technical Capacity and Financial Capacity of the Bidder/Consortium Members under Clauses 2.1 and 3.2, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

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

It is clarified that a certificate from its Statutory Auditor shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

2.2.8 The following conditions shall be adhered to while submitting a Bid:

- i. Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- ii. Information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.
- iii. in responding to the Bid, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- iv. In case the Bidder is a Consortium, each Member should substantially satisfy the Eligibility Criteria to the extent specified herein.

2.2.9 Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 1) issued by Ministry of Finance, Department of Expenditure Public Procurement Division vide F. No. 6/18/2019-PPD, dated 23rd July 2020. For details, the Bidder is advised to refer the aforementioned Order. Non-compliance with the Order will cause the Bid of such Bidder to be rejected outrightly.

While the process is open to persons from any country subject to Clause 2.2.9, the following provisions shall apply:

- i. where, on the date of the Bid, not less than 50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- ii. *if at any subsequent stage after the date of the Bid, there is an acquisition of not less than

50% (fifty percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member; then the qualification and/ or opening of Financial Bid and/ or award of the Project to such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of RTDC from the perspective of national security and public interest perspective. The decision of RTDC in this behalf shall be final and conclusive and binding on the Bidder.

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

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

- 2.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 3 (three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.3 Change in Ownership

- 2.3.1 By submitting the Bid, the Bidder acknowledges that it was qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall continue to hold 100% of subscribed and paid up equity share capital of the bidder with lead member holding atleast 51% of subscribed and paid up equity share capital of the bidder until the 5th Anniversary of COD of the project and further not less than 51% of subscribed and paid up equity share capital till the end of Operation Period with Lead Member holding atleast 26% of subscribed and paid up equity share capital .
- 2.3.2 The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Operation Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Operation Agreement, be deemed to be a breach of the Operation Agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.
- 2.3.3 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a member of the Consortium or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform RTDC forthwith along with all

relevant particulars about the same and RTDC may, in its sole discretion, disqualify the Bidder or withdraw the LoA from the Selected Bidder, as the case may be.

- 2.3.4 In the event such change in control occurs after signing of the Operation Agreement but prior to the 5th (fifth) anniversary of the date of Commercial Operations of the Project, it would, notwithstanding anything to the contrary contained in the Operation Agreement, be deemed to be a breach of the Operation Agreement, and the same shall be liable to be terminated without RTDC / Authority being liable in any manner whatsoever to the Operator. In such an event, notwithstanding anything to the contrary contained in the Operation Agreement, RTDC / Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Operation Agreement or otherwise.

2.4 Number of Bids and Costs thereof

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium as the case may be. In response to this Bid any Bidder who submits or participate in more than one Bid shall be disqualified.

2.5 Site Visit and Verification of Information

Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the location, surroundings, climate, availability of power, water and other utilities for re-development, access to site, weather data, applicable laws and regulations or any other matter considered relevant by them. The Bidders shall visit the Project Site in accordance with the provision of Clause 1.2.4.

2.6 Acknowledgement by Bidder

- 2.6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- i. Made a complete and careful examination of the RFP;
 - ii. Received all relevant information requested from RTDC;
 - iii. Acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of RTDC or relating to any of the matters referred in Clause 2.5 above; and
 - iv. Agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.6.2 RTDC shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Bidding Process, including any error or mistake therein or in any information or data given by RTDC.

2.7 Right to Accept or Reject any or all Bid/ Bids

- 2.7.1 Notwithstanding anything contained in this RFP, RTDC reserves the right to accept or reject any Bid and to annul the bidding process and reject all Bids, at any time without any liability whatsoever or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event RTDC rejects or annuls all the Bid/Bids, it may, in its discretion, invite all Bidder / Bidders to submit fresh Bid /Bids hereunder.

- 2.7.2 RTDC reserves the right to reject any Bid and/or disqualify the Bidder if:
- i. at any time, a material misrepresentation is made or uncovered; or
 - ii. the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by Authority for evaluation of the Bid.
- 2.7.3 If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the successful bidder gets disqualified/ rejected, then RTDC reserves the right to take any such measure as may be deemed fit in the sole discretion of RTDC, including annulment of the Bidding Process.
- 2.7.4 In case it is found during the evaluation or at any time before signing of the Operation Agreement or after execution of the Operation Agreement and during the period of subsistence thereof, including the operation thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the LoA or entering into of the Operation Agreement, and if the Bidder has already been issued the LoA or has entered into the Operation Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by RTDC / Authority to the Bidder, without RTDC / Authority being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which RTDC / Authority may have under this RFP the Bidding Documents, the Operation Agreement or under applicable law.
- 2.7.5 RTDC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

B. DOCUMENTS

2.8 Contents of the RFP

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

Invitation for Bids

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

Appendices

- I. Letter comprising the Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium
- IV. Joint Bidding Agreement for Consortium
- V. Bank Guarantee for Bid Security
- VI. Guidelines of the Department of Disinvestment
- VII. Self-Undertaking
- VIII. (A) Financial Proposal- Cover Letter
(B) Financial Proposal
- IX. Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules, 2017 (GFRs) as per format given in Appendix-IX shall be submitted by the Bidder with the Bid duly signed by Authorised signatory & shall be part of the Operation Agreement.

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

2.9 Clarifications

2.9.1 The Bidders may email their queries to dgmrtldhp@gmail.com provided in Notice Inviting Bid in the format specified below. The document containing the pre-proposal queries to be emailed shall bear the following identification:

“Queries Concerning - Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode”

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

- 2.9.2 The Bidders should send in their queries at least 2 (two) days prior to the Pre-Bid Conference date specified in the Schedule 1.3 of the RFP. RTDC shall endeavor to respond to the queries within the period specified therein.
- 2.9.3 RTDC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, RTDC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring RTDC to respond to any question or to provide any clarification.
- 2.9.4 RTDC may, on its own, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by RTDC shall be deemed to be part of the RFP. Verbal clarifications and information given by RTDC or its employees or representatives shall not in any way or manner be binding on RTDC.

2.10 Amendment of RFP

- 2.10.1 At any time prior to the deadline for submission of Bid, RTDC may, for any reason, whether at its own initiative or in response to clarifications requested by Bidder, modify the RFP by the issuance of Addendum.
- 2.10.2 Any Addendum thus issued will only be uploaded on the website www.rtdchp.org.
- 2.10.3 In order to afford the Bidders a reasonable time in which to take an Addendum into account, or for any other reason, RTDC may, at its own discretion, extend the Bid Due Date.

C.PREPARATION & SUBMISSION OF BID

2.11 Language

- 2.11.1 The Bid and all related correspondence and documents should be written in the English language. Supporting documents and printed literature uploaded on website by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.11.2 All communication provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of different in amounts stated in figures and words, the amount stated in words only will be taken as correct and final.

2.12 Format & Signing of Bid

- 2.12.1 The Bidder shall provide all information sought under this RFP. RTDC would evaluate only those Bids that are received in the required format and complete in all respects. Incomplete and / or conditional Bids shall be liable for rejection.
- 2.12.2 The Bid shall be stamped and signed by the Authorized Signatory of the Bidder. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers.

2.13 Bid Due Date

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

2.14 Late Bids

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

2.15 Modification/ Substitution/ Withdrawal of Bids

- 2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission provided that written notice of the modification, substitution or withdrawal is received by RTDC within the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date.
- 2.15.2 Any alteration/modification in the Bid or additional information material supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by RTDC, shall be disregarded.

2.16 Submission of Bid

_____ Techno-Commercial Bid shall be submitted by due date and time as mentioned in Clause 1.3-

of this RFP document, at the office of RTDC. Technical Bids and Price Bids (Financial Proposal) shall be in separate sealed envelopes and clearly marked as Technical Bid and Price Bid. Further, both these envelopes should be enclosed in another envelope superscribing:

“Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode”

D. Evaluation Process

2.17 Opening & Evaluation of Bids

- 2.17.1 RTDC would open the Bids as per the schedule specified in Clause 1.3 of this RFP in the presence of the Bidders who choose to attend.
- 2.17.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.15 shall not be opened.
- 2.17.3 RTDC would subsequently examine and evaluate Bids in accordance with the provisions set out in **Section 3** on “Criteria for Evaluation of Bids”.
- 2.17.4 Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Bid shall not in any way be construed as binding on RTDC, its consultants, agents, successors or assigns, but shall be binding against the Bidder if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.
- 2.17.6 RTDC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any Bid without assigning any reasons.
- 2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, RTDC may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Bidder.
- 2.17.8 In the event the Bidder claims credit for an Eligible Project, and such claim is determined by RTDC as incorrect or erroneous, RTDC shall reject such claim and exclude the same from computation of the Technical Capacity. Where any information is found to be patently false or amounting to a material misrepresentation, the RTDC reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.1 and 2.7.4.

2.18 Confidentiality

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

2.19 Tests of Responsiveness

- 2.19.1 Prior to evaluation of Bids, RTDC will determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
 - i. It is received as per formats given in this RFP;
 - ii. It is received within the Bid Due Date including any extension thereof pursuant to Clause 2.13;
 - iii. It is signed, stamped and marked as stipulated in Clauses 2.12;
 - iv. It contains the Bid Security of Rs. 1 Lakh (Rupees One Lakh only) in form of Demand Draft or a Bank Guarantee acceptable to the RTDC;
 - v. It is accompanied by the Power of Attorney as specified in Clause 2.2.3 and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.3 as per the formats Appendix II and Appendix III respectively;

- vi. It contains all information (complete in all respects) as stipulated in the RFP;
- vii. It contains information as per the formats specified in this RFP. Non-adherence to the formats may be a ground for declaring the Bid as non-responsive;
- viii. It contains certificates from its Statutory Auditors/ practicing Chartered Accountant in the formats specified at **Annexure II: Technical Capacity of Bidder of the RFP for each Eligible Project and at Annexure III: Financial Capacity of Bidder;**
- ix. It is accompanied by the Joint Bidding Agreement (applicable in case Bidder is Consortium), specific to the Project, as stipulated in Clause 2.2.4 as per the format Appendix IV;
- x. Financial Bid should **NOT** be part of the Technical Proposal and should be in a separate sealed envelope;
- xi. It does not contain any condition or qualification; and
- xii. It is not non-responsive in terms hereof.

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

2.20 Clarifications from Bidders

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

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

2.21 Proprietary Data

All documents and other information supplied by RTDC or submitted by the Bidder to RTDC shall remain or become the property of RTDC. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. RTDC shall not return any Bid or any information provided along therewith.

2.22 Correspondence with Bidder

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

E.BID SECURITY

2.23 Bid Security / Earnest Money Deposit (EMD)

2.23.1 The Bidder shall furnish as part of its Bid, a Bid Security of **Rs. 1,00,000/- (Rupees One Lakh Only)** in the form of a Demand Draft drawn on a Scheduled Bank in India, drawn in favour of Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC) and payable at Shimla (the “**Bid Security**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

Bid Security can also be in the form of Bank Guarantee issued by a Nationalized/ Scheduled in India in favour of Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), in the format at Appendix - V and having a validity period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date with a claim period of at least 60 (Sixty) days, which may be extended as may be mutually agreed between the RTDC and the Bidder from time to time. RTDC shall not be liable to pay any interest on the Bid Security so submitted and the same shall be interest free.

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

2.23.3 The Bid Security of unsuccessful Bidders will be returned by RTDC, without any interest, as promptly as possible on acceptance of the Bid of the successful bidder or when the Bidding process is cancelled by the RTDC/Authority. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the RTDC give the name and address of the person in whose favour the said Demand Draft shall be drawn by RTDC for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.23.4 The successful bidder’s Bid Security will be returned, without any interest, upon the Bidder signing the Operation Agreement and furnishing the Performance Security in accordance with the provisions thereof.

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

2.23.6 The Bid Security shall be forfeited and appropriated by the RTDC as mutually agreed genuine pre-estimated compensation and damages payable to RTDC for, inter alia, time, cost and effort of RTDC/Authority without prejudice to any other right or remedy that may be available to the RTDC hereunder or otherwise, under the following conditions:

- i. If a Bidder submits a non-responsive Bid;
- ii. If the Bidder submits or divulges Financial Bid in the Technical Proposal.
- iii. If the Bidder submits Financial Bid along with the Technical Bid in the same envelope as Technical Bid.
- iv. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice,

- undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- v. If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
 - vi. In the case of successful bidder, if it fails within the specified time limit -
 - a. to sign the Operation Agreement and/or
 - b. to furnish the Performance Security within the period prescribed therefore in the Operation Agreement; or
 - vii. In case the successful bidder, having signed the Operation Agreement, commits any breach thereof prior to furnishing the Performance Security.

F. PERFORMANCE SECURITY

2.24 Performance Security

- 2.24.1 The successful bidder shall furnish to the Authority, Performance Security, in the form of an irrevocable and unconditional Bank Guarantee issued by a Scheduled Bank in India, drawn in favour of Ropeway and Rapid Transport System Development Corporation H.P. Limited (RTDC) payable at Shimla for due and faithful performance of its obligations, for a value of **Rs.10,00,000/- (Rupees Ten Lakh Only)**, within 30 days of the issue of Letter of Award (LOA). This Bank Guarantee shall be returned to the successful bidder after 6 months of the completion of Agreement Period or Termination, whichever is earlier.
- 2.24.2 In case of breach of any of the provisions of the contract the Authority shall revoke the Performance Bank Guarantee to apportion the losses on account of such breach.
- 2.24.3 The bidder shall have to replenish the Bank Guarantee after such apportionment to its original value (in case of partial appropriation) or furnish a new Bank Guarantee of same value (in case of total appropriation), as the case may be.

3. CRITERIA FOR EVALUATION OF BIDS

3.1 Evaluation Parameters

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2 of this RFP above shall qualify for participation in the Bidding Process. Bids of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder whose bid meets the qualifying criteria, shall be eligible for financial opening.
- 3.1.3 The evaluation of financial proposals shall be carried out for the Project and bidder who has quoted the highest AFF shall be awarded the project.

3.2 Details of Experience

- 3.2.1 The Bidder should furnish the details of Eligible Experience for the past 3 (three) years preceding the Bid Due Date.
- 3.2.2 The Bidders must provide the necessary information relating to Technical Capacity as per form at Annexure II: Technical Capacity of Bidder of Appendix I: Letter Comprising the Bid.
- 3.2.3 The Bidder should furnish the required project-specific information and evidence in support its claim of Technical Capacity, as per format at Annexure-II of Appendix-I.

3.3 Financial Information for the Purpose of Evaluation

- 3.3.1 The Bid must be accompanied by Audited Annual Reports of the Bidder (of each member in case of a Consortium and of the Associate if relying on the Net Cash Flows & Net-worth of Associate for the purpose of qualification) for the last 3 (Three) financial years, preceding the Bid Due Date.
- 3.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.3.3 The Bidder must establish Financial Capacity specified in Clause 2.2.1 (C) and provide details as per format at Annexure III: Financial Capacity of Bidder of Appendix I: Letter Comprising the Bid.

3.4 Short listing of Bidders

- 3.4.1 RTDC shall qualify and shortlist the Bidders who fulfill the stipulated Technical and Financial Capacity criteria as set out in this RFP
- 3.4.2 RTDC will notify the other Bidders also who do not fulfill either or both of the Technical and Financial Capacity. RTDC will not entertain any query or clarification from Bidders who fail to qualify.

3.5 Selection of Bidder

3.5.1 The RTDC would open the Bid as per the schedule specified in Clause 1.3. Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and 3.3 and who qualify technically shall be Technically Responsive Bidders and shall only be eligible for evaluation as per clause 3.1.2 and opening of Financial Bids.

3.5.2 Technically & Financially qualifying bidder with highest quoted AFF shall be the successful bidder.

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

“Annual Fixed Fee (AFF) as quoted by the bidder to be escalated at 5% every year payable from first year of Effective Date / Appointed Date (date of which Conditions Precedent are fulfilled by both the Parties in accordance with ARTICLE 4 of the Operation Agreement) or from the date of signing of Contract as accorded by the Authority as per ARTICLE 14 of the Operation Agreement), whichever is earlier.”

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

3.6 Award of the Project

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

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

3.7 Contacts during Bid Evaluation

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

3.8 Dispute Resolution

3.8.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in

writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably.

- 3.8.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

3.9 Adjudication

- i. Any Dispute which is not resolved amicably, as provided in Clause 3.8 shall be submitted for adjudication before “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd** ” as sole Arbitrator. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.
- ii. The “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd**” shall make a reasoned award (the “**Award**”). Any Award made by “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd**” pursuant to this Clause 3.9 or ARTICLE 28 of the Operation Agreement, as the case may be, shall be final and binding on the Parties from the date it has been made. The Operator and the Authority agree and undertake to carry out all such acts in order to implement such Award without delay.
- iii. The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- iv. This RFP and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.
- v. The cost incurred on adjudication including inter alia the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.

4. FRAUD & CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, RTDC shall reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.
- 4.2 Without prejudice to the rights of RTDC under Clause 4.1 hereinabove, if a Bidder is found by RTDC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by RTDC during a period of 2 (two) years from the date such Bidder is found by RTDC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section 4 Fraud & Corrupt Practices, the following terms shall have the meaning hereinafter respectively assigned to them:
- I. **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of RTDC who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the Operation Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of RTDC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.2, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LoA or after the execution of the Operation Agreement, as the case maybe, any person in respect of any matter relating to the Project or the LoA or the Operation Agreement, who at any time has been or is a legal, financial or technical adviser of RTDC in relation to any matter concerning the Project;
 - II. **“Fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - III. **“Coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - IV. **“Undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by RTDC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
 - V. **“Restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE BID CONFERENCE

- 5.1 The Pre-Bid Conference shall be convened at the designated date, time and place to be specified.
- 5.2 A maximum of 3 (three) representatives from each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.3 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of RTDC in writing. RTDC shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.4 The Bidders may email their queries to the email Ids provided in Notice Inviting Bid in the format specified below. The document containing the pre-proposal queries to be emailed shall bear the following identification:

"Selection of Service Provider for Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode"

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

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Shimla, India shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in-connection with the Bidding Process.
- 6.2 RTDC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- i. Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - ii. Consult with any Bidder in order to receive clarification or further information;
 - iii. Pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - iv. Retain any information and/ or evidence submitted to RTDC by, on behalf of, and/ or in relation to any Bidder;
 - v. Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder; and/or
 - vi. Supplement/Modify/Amend/Alter the terms of grant of operation pursuant to this RFP, or technical/financial or any other parameter for selection or evaluation of the Bidders or any terms and conditions of this RFP.
- 6.2.1. In order to afford the bidders a reasonable time for taking addendum / supplement / modification etc. into account or for any other reason, the RTDC may, at its own discretion, extend the Bid Due Date and time.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases RTDC/ Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

7. TERMS OF REFERENCE

7.1 Introduction

Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd. is a company registered under Companies Act, 2013 with its headquarters at Shimla. The company is fully owned by the Government of Himachal Pradesh. RTDC aims to decongest major urban hubs in the state such as Shimla, Dharamshala, Manali and rest of Himachal Pradesh by devising innovative transport solutions. The RTDC will enhance connectivity to unexplored new places of tourist interest in the state to boost tourism potential in the near future.

RTDC will also work towards providing all-weather connectivity to tribal areas which remain cut-off during the winter. The project is in line with the objects of the authority and the Shimla Smart city plan. RTDC has developed escalators/ elevators at the following locations:

Elevators :

- Lakkar Bazar Bus Stand to Ridge (Tibetan Market)
- Police Chowki Lakkar Bazar to Auckland Tunnel
- Vikas Nagar
- Middle Bazar

Escalator

- Jakhoo Temple

RTDC intends to **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode.**

7.2 Project Brief

The Authority has decided to invite Bids for selection of prospective Bidder at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazar who shall undertake the **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode** for a specified tenure (the “**Project**”) through Public Private Partnership (the “**PPP**”).

1. **Jakhoo Temple:**

Nestled amidst the vibrant beauty of the Shivalik hill ranges, Jakhoo Temple is an ancient Hanuman temple which offers a mystical vibe to the devotees of the "Pawan Putra". One of the famous sightseeing places in Shimla, it has the world's largest statue of God Hanuman, attracting holidaymakers of all ages apart from the Hindu community. Overlooking the nearby town of Sanjauli, the surroundings of the Jakhoo Temple are complemented by amazing views that make the setting even more spectacular. It is a great place to enjoy the awe inspiring sunrises and sunsets and an adventurous drive for trek enthusiasts. Other than that, the lush green winding pathways are an absolute treat for nature lovers.

It is situated at the highest point in Shimla, Jakhoo Temple is located on Jakhoo Hill. It stands at an elevation of about 2,455 meters (8,054 feet), making it the highest point in Shimla. The statue is one of the tallest in the world. There are approx. 200 steps from main entry gate to Hanuman Ji statue to avoid these steps an escalator purposed by RTDC.

2. Vikas Nagar:

Vikas Nagar is an upcoming neighborhood in Shimla, Himachal Pradesh. The place is scenic and offers rich natural views to its inhabitants and people who visit the area. The Shimla Bypass borders the locality and allows the dwellers to commute easily to adjoining places. The Shimla Old Railway Station is the major junction nearby and links the place with several areas of importance. Jaypee University of Information Technology, Bells Institute of Management & Technology, Bishop Cotton School etc are some of the reputed educational institutions positioned in and around the place. Presence of strong infrastructural facilities, popular medical centres and a cool climate throughout the year have all contributed towards qualifying Vikas Nagar as a favourite Real Estate hub.

3. Middle Bazar:

Middle Bazar connects lower bazaar to Mall Road. The easiest way to slip into Middle Bazar is from the turn at Baljee's Restaurant on the main Mall Road. A flight of stairs leads you down to this market place that is best known for the New Plaza Restaurant and Malook Restaurant, both of which regale diners with hearty preparations of Indian delicacies in a boisterous ambiance. Middle Bazar also has a number of general stores, chemists and street food stalls where regulars converge every evening to discuss politics, the environment, possibilities of rain showers and such matters of consequence. This is a great place to stroll through if you have had your fill with the touristy Mall Road and The Ridge.

Lower Bazaar lies down a slope off the main Mall Road and is where you should head to for a slice of the local life. This is where fruits and vegetables are bargained for with great fervour, where locals meet at street side cafes for some steaming tea, where the faithful make their way to the nearby Ram Mandir at dusk and where curious tourists venture in to pick up souvenirs at slightly lesser rates. This atmospheric bazaar which takes on a fairytale-like character after dark is truly one-of-a-kind and absolutely encapsulates the life of the adorable natives of this City of Hills. It is close to the escalator service of middle bazar.

7.3 Project Components

The Project components include:

S. No.	Location	Component	Escalator/ Elevator
1	Jakhoo Temple	Ticket Counter Space for Advertisement Common Area	2+2 Escalator
2	Vikas Nagar	Ticket Counter Space for Advertisement Common Area	3 Elevators
3	Middle Bazar	Ticket Counter Space for Advertisement Common Area	1 Elevator

7.4 Minimum Development Obligations - DELETED

7.5 Scope of Work

The Operator shall undertake the Operation of elevators / escalators at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazar in accordance with Section 7 of this RFP and shall also be responsible for collection of the user fees / tickets from users of these elevators / escalators over the Operation Period of 5(five) extendable further at the discretion of the Authority subject to the terms and conditions and provisions as stipulated in the Operation Agreement.

7.5.1 The Operator shall undertake all the activities pertaining to Operation of the elevators / escalators installed at the three locations in Shimla.

7.5.2 The Operator shall be responsible for fulfilling the following obligations as well:

- i. The Operator shall be responsible for seeking all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, bar license, etc.
- ii. The Operator shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the operation phase all relevant insurances as per statutory requirements or otherwise should be in place.
- iii. The Operator shall maintain the entire premises in accordance with Good Industry Practice.
- iv. The Operator shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- v. Meeting the requirements and norms laid down by the competent authorities regarding Operation of the Project Facilities, if any.
- vi. Housekeeping services to be provided on daily basis.
- vii. Performance and fulfillment of all obligations of the Operator in accordance with the provisions of the Operation Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under the Operation Agreement.
- viii. The Operator shall be responsible for payment of all taxes including GST as per GoI norms issued in this regard from time to time, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.

7.6 Nomenclature of the escalators / elevators

The Operator shall be allowed to Brand the property.

7.7 Completion Period /Implementation Period

Deleted

7.8 Operation Period

Operator shall commence operations within 15 days from the Effective Date. The Operator shall have the flexibility of commencing operations of individual facilities as and when they are completed and permission to Commence Operations is received from the Competent Authority as per the provisions of the Operation Agreement.

7.9 Annual Fixed Fee (AFF)

In consideration of the operational rights of the Project, the Operator shall pay to the Authority, an Annual Fixed Fee to be quoted by the bidder and escalated at 5% every year. The AFF shall be payable semi-annually from the first month of the Effective Date or on COD, whichever is earlier. While quoting the AFF the bidders shall take into account the following:

- i. Revenue from User Fees & Passes
- ii. Revenue from Branding & Advertisements

The initial Annual Fixed Fee (AFF) shall be paid by the Selected Bidder upon commencement of the contract, followed by subsequent payments on a semi-annual basis from next financial year. The first payment for subsequent year shall be on the first day of each financial year, which occurs on the 1st of April and second payment on the 1st of October, or on the succeeding working day in the event of a holiday.

Illustration : Incase the Effective date is 01.04.2024 and COD is 15.04.24 then the first installment of the AFF shall be paid on 01.04.24, and second installment for the year shall be paid on 01.10.24. For subsequent years the due date for payment of AFF shall be 1st of April and 1st of October of each financial year.

7.10 Operation Period

The Operation Period for Project shall be 5 years from the Effective Date / Appointed Date. The Commercial Operation Date shall not be later than 15 days from the Date of Completion or any other extension communicated in writing by the Authority. It is to be noted that Completion Period is part of the total Operation Period of 5 years. In case the Operator is able to commence Commercial Operations earlier than the scheduled Commercial Operations Date (COD), the Operator would have the right to revenues for such period. In case the Operator fails to commence Commercial Operations on the scheduled Commercial Operations Date (COD), any delay shall result in reduction in effective revenue generating years for the Operator besides and without prejudice to other rights of the Authority to impose penalties for delay and recover damages as per the provisions of the Operation Agreement. Further, if the Completion Period is extended due to reasons attributable to the Authority or due to Force Majeure Events, the Operation Period shall be extended by the duration equivalent to the subsistence of such event.

CHECKLIST OF SUBMISSIONS

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

APPENDIX I: LETTER COMPRISING THE BID

To

The Deputy General Manager (DGM)
Ropeways and Rapid Transport System
Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001

Sub: “Selection of Service Provider for Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode” -

Dear Sir,

1. With reference to your RFP document dated, I/We, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional in all respects.
2. I/ We acknowledge that RTDC will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid project, and we certify that all information provided in the Bid and in Annexure I to IV is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the Operation of the aforesaid Project.
4. I/ We shall make available to RTDC any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of RTDC to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. We certify that in the last 3 (three) years, we/ any of the Consortium Members or our/ their Associate have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any Project or contract nor have had any contract terminated for breach on our part.
7. I/ We declare that:
 - i. I/ We have examined and have no reservations to the RFP document, including any Addendum issued by RTDC.
 - ii. I/ We do not have any conflict of interest in accordance with Clauses 2.2(iii) of the RFP;
 - iii. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section on Fraud & Corrupt Practices of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into

with RTDC or any other public sector enterprise or any government, Central or State;

- iv. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section on Fraud & Corrupt Practices of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;
 - v. I/ We hereby certify and confirm that in the preparation and submission of this Bid, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive, restrictive or monopolistic trade practice;
 - vi. I/ We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid; and
 - vii. I/ We are not barred by RTDC, or any state government or any of their agencies from participating in similar projects.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
 9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the Cash Flow and Net Worth criteria and meet(s) the requirements as specified in the RFP document.
 10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/any other Consortium applying for the Bid
 11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. I/ We further certify that no investigation by a regulatory authority is pending either against us / any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ Employees.
 14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VI thereof.
 15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred

to above, we shall intimate RTDC of the same immediately.

16. I/ We hereby submit the Statement of Legal Capacity as per format provided at Annexure IV: Statement of Legal Capacity with this Letter Comprising the Bid.
17. I/ We hereby submit the Power of Attorney for signing of Bid and the Power of Attorney for Lead Member of Consortium, as per format provided at Appendix II: Format for Power of Attorney for signing of Bid and Appendix III: Format for Power of Attorney for Lead Member of Consortium respectively of the RFP, is also enclosed.
18. I/We, hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by RTDC in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
20. I/ We certify that in terms of the RFP, my/our Financial Net worth is Rs. _____(Rs. in words), Net worth is INR..... (INR. in words) and we have positive cash flows over 4 of the last 5 financial years and meet the Eligibility Criteria as mentioned in Clause 2.2.1 of this RFP document.
21. We agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Operation Agreement till occurrence of Financial Close in accordance with the Operation Agreement.

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

Yours faithfully,

Date:

Signature, Name and Designation of the Authorized Signatory

Place:

Name and Seal of the Bidder/ Lead Member

Annexure I: Details of Bidder

1.
 - (a) Name:
 - (b) Country of incorporation/ registration:
 - (c) Address of the Corporate Headquarters and its Branch Office(s), if any, in India:
 - (d) Date of Incorporation and/ or Commencement of Business:
2. Brief description of the entity including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of Individual(s) who will serve as the Point of Contact/ Communication for RTDC:
 - a. Name:
 - b. Designation:
 - c. Entity:
 - d. Address:
 - e. Telephone Number:
 - f. E-Mail Address:
 - g. Fax Number:
4. Particulars of the Authorized Signatory of the Bidder:
 - a. Name:
 - b. Designation:
 - c. Address:
 - d. Phone Number:
 - e. Fax Number:
5. In case of a Consortium:
 - a. The information above (1-4) should be provided for all the members of the Consortium.
 - b. A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.4 should be attached to the Bid.
 - c. Information regarding role of each member should be provided as per table below:

S.no.	Name of Member	Role*{Refer Clause 2.2.4}	Percentage of share in the Consortium {Refer Clause 2.2.4}
1.			
2.			

d. The following information shall also be provided for each member of the Consortium:

Name of Bidder /member of Consortium

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

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

Date: _____ Signature, Name and Designation of the Authorized Signatory

Place: _____ Name and Seal of the Bidder/ Lead Member

Annexure II: Technical Capacity of Bidder

(A)

Format

Project Name	Location	Project Cost in INR	Date of Completion of the Project

Note:

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

This is to certify that _____ (Name of the Bidder) has _____ (Title and nature of the Projects) with a total investment of INR. ____ Crores.

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

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

Signature _____

Name _____

Designation _____

Entity _____

Date _____

**Annexure III: Financial Capacity of
Bidder
FORMAT FOR FINANCIAL DATA**

1. Turnover related data

All figures in INR Cr.

Description	Past three Financial years (Audited accounts)		
	Year	Year	Year
Turnover			

2. Net Worth related data for the preceding financial year

All figures in INR Cr

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

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

1. Note: Audited Balance Sheets, Financial Statements and Annual Reports (where the Bidder is a Company) and Profit & Loss statements, ITRs of the Bidder (of each Member in case of a Consortium and/ or of an Associate if relying on the financial credentials of an Associate for the purpose of qualification) at the closing of the preceding Financial Year, before the Bid Due Date shall be enclosed. The financial statements shall:
 - a. reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Applicant is relying on its Associate's financials;
 - b. be audited by a Statutory Auditor;
 - c. be complete, including all notes to the financial statements; and

- d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in terms of this RFP;
3. The Bidder shall provide an Auditor's certificate/ practicing Chartered Accountant certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth;
4. For the purposes of this RFP the term Net Worth means following:
 - a. **"Net Worth" for company shall mean** the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
 - b. **Net Worth for Partnership Firm would mean:** [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]
 - c. **Net Worth for Sole Proprietorship would mean:** Total Assets- Total Liabilities

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

Signature:.....
 Name:
 Designation:
 Name of Bidder:
 Stamp/ seal:
 Date:

Annexure IV: Statement of Legal Capacity
(On the letterhead of the Bidder/ Lead Member of Consortium)

Ref.

Date:

To

The Deputy General Manager
Ropeways and Rapid Transport System
Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001

Dear Sir,

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

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

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

Thanking you,

Yours

faithfully,

Authorized

Signatory For and on

behalf of

*Please strike out whichever is not applicable.

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

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

POWER OF ATTORNEY

Know all men by these presents, We _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), _____ son/daughter/wife _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid to RTDC for the Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode (the “Project”) proposed or being developed by the (the “Authority”) including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to RTDC and/ or the Authority, representing us in all matters before RTDC and/ or the Authority, signing and execution of all contracts including the Operation Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with RTDC and/ or the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/ or till the entering into of the Operation Agreement with the Authority.

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

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ____ DAY OF _____, 20**

(Signature, name, designation and address)

For ...

(Signature)

Witnesses:

1.

[Notarized]

2.

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Note:

- *To be executed by the sole Bidder or the Lead Member in case of a Consortium as the case may be.*
- *The Power of Attorney to bear proof of payment of stamp duty in accordance with the jurisdictional stamp legislation.*
- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued in India, the notarization is to confirm that the document was executed in the presence of a notary.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries conforming Apostille certificate.*

**APPENDIX III: FORMAT FOR POWER OF ATTORNEY FOR LEAD MEMBER OF
CONSORTIUM**

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

POWER OF ATTORNEY

Whereas Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC) has invited Bids from interested parties for Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode in the State of Himachal Pradesh (the “**Project**”). Whereas, and _____(collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP)and other connected documents in respect of the Project,

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____, [the name and address of the registered office] (hereinafter referred to as the “Principal”) do hereby irrevocably designate, nominate, constitute, appoint and authorize 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 authorize 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 Operation/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 submission of its bid for the Project, including but not limited to signing and submission of all Bids, 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 bid of the Consortium and generally to represent the Consortium in all its dealings with RTDC and/ or the Authority, 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 Operation Agreement is entered into with the Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _DAY OF _20**

For _____

(Signature)

(Name & Title)

For _____
(Signature)

(Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

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

Notes:

- *The Power of Attorney to bear proof of payment of stamp duty in accordance with the jurisdictional stamp legislation.*
- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued in India, the notarization is to confirm that the document was executed in the presence of a notary.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries conforming Apostille certificate*

APPENDIX IV: JOINT BIDDING AGREEMENT FOR CONSORTIUM

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

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

- 1.(a Sole Proprietorship, Partnership firm, LLP or a Company (Public or Private Ltd.)¹ incorporated under..... and having its registered office at.....(hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

- 2. (a Sole Proprietorship, Partnership firm, LLP or a Company (Public or Private Ltd.)² registered/ incorporated under and having its registered office at (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

- 3. (a Sole Proprietorship, Partnership firm, LLP or a Company (Public or Private Ltd.)³ registered/ incorporated under and having its registered office at (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS,

Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), represented by

_____,
and having its principal office at US Club, Shimla – 171001 (hereinafter referred to as the “RTDC” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the Bids”) by its Request for Proposal No. dated (the “RFP”) for selection of bidder for **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode**

¹Please select the correct option as per the nature and form of the entity. ²Please select the correct option as per the nature and form of the entity. ³Please select the correct option as per the nature and form of the entity.

- A. 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
- B. It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

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

2. Consortium

The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project. The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared as the Selected Bidder and awarded the Project, it shall enter into a Operation Agreement with the Authority and for performing all its obligations as the operator in terms of the Operation 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 Appointed Date under the Operation Agreement when all the obligations of the operator shall become effective;
- b. Party of the Second Part shall be the-----Member of the Consortium
- c. Party of the Third Part shall be the -----Member of the Consortium
- d. The roles and responsibilities of the Members of the Consortium shall be as follows:
 - The Party of the First Part (Lead Member) shall be responsible for:
 - i.
 - ii.
 - The Party of the Second Part shall be responsible for:
 - (i)
 - (ii)
 - The Party of the Third Part shall be responsible for:

- (i)
- (ii)

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Operation Agreement, till the tenth anniversary of the date of commercial operations of the Project is achieved under and in accordance with the Operation Agreement.

6. Shareholding in the SPV – Deleted

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 organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement; and
- b) The execution, delivery and performance by such Party of this Agreement has been authorized 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 favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the member of the Consortium 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 organizational documents thereof;
 - iv. violate any clearance, permit, operation, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement.
- c) This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force till the Operation Period of the Project is achieved under and in accordance with the Operation Agreement,

in case the Project is awarded to the Consortium. However, in case the Consortium is either not prequalified 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 the Authority to the Bidder, as the case may be.

9. Miscellaneous

- a) That in case the project is awarded to the Consortium, the Consortium will carry out all the responsibilities as the Authorize and will comply with all the terms and conditions of the Authorization Agreement as would be entered with the Authority.
- b) This Joint Bidding Agreement shall be governed by laws of India.
- c) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

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

LEAD MEMBER by:	SECOND PARTY	THIRD PARTY
(Signature)	(Signature)	(Signature)
(Name):	(Name)	(Name)
(Designation)	(Designation)	(Designation)
(Address)	(Address)	(Address)

Notes:

1. *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
2. *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as Resolution / Power of Attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Members.*
3. *For a Joint Bidding Agreement executed and issued in India, the notarization is to confirm that the document was executed in the presence of a notary.*
4. *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy. However, the Joint Bidding Agreement executed in countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries*

conforming Apostille certificate.

5. The Joint Bidding Agreement to bear proof of payment of stamp duty in accordance with the jurisdictional stamp legislation.

APPENDIX V: Bank Guarantee for Bid Security

B.G. No.

Dated:

1. In consideration of you, Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC), having its office at US Club, Shimla – 171001 (hereinafter referred to as the “RTDC”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a registered under the relevant laws of India) and having its registered office at.....{and acting on behalf of its Consortium⁴} (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the RFP for “Selection Of Service Provider For Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode” (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft Operation Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at..... and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to RTDC an amount of _____ (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by RTDC stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of RTDC is disputed by the Bidder or not, merely on the first demand from RTDC stating that the amount claimed is due to RTDC by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set- forth in the said Bidding Documents for any reason whatsoever. Any such demand made

⁴ Applicable only in the case of Bidder applying as Joint Venture/ Consortium

on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding_____.

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between RTDC and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that RTDC shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of RTDC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between RTDC and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, RTDC shall be entitled to treat the Bank as the principal debtor. RTDC shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to RTDC, and the Bank shall not be released from its liability under these presents by any exercise by RTDC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of RTDC or any indulgence by RTDC to the said Bidder or by any change in the constitution of RTDC or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch

which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for RTDC to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which RTDC may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of RTDC in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to **Rs. _____**. The Bank shall be liable to pay the said amount or any part thereof only if RTDC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX VI: GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT

(To be signed & submitted along with the Bid)

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

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

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

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

- a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- e. The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- f. Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

- g. Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary
to the
Government of
India

APPENDIX VII: SELF UNDERTAKING

(On Letter Head of the Bidder/All the members in Case of a Consortium)

Ref.

Date:

To

The Deputy General Manager

Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC),

US Club, Shimla – 171001

Sub: “Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode”

Dear Sir,

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

Yours faithfully

(Signature, name and designation of the authorized signatory)

For and on behalf of

APPENDIX VIII (A): FINANCIAL PROPOSAL
Covering Letter

Date: _____

To

The Deputy General Manager
Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001

Sub: Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode

Dear Sir,

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

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

Yours faithfully,
(Signature, name and designation of the authorized Signatory)

APPENDIX VIII (B): FINANCIAL PROPOSAL

(TO BE SUBMITTED IN A SEPARATE SEALED ENVELOPE)

S. No.	Project/Name	Total AFF (in INR)	Total AFF (in Words)
1.	Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode		

Authorized Signature:

Name:

Designation

Name of firm: ...

Address.....

Note:

1. The rate quoted above should be exclusive of all taxes.
2. All payment shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.
3. The financial proposal shall not include any conditions attached to it and any such conditional financial proposal shall be rejected summarily.
4. The AFF quoted above shall be increased at the rate of 5% every year as per the provisions of this RFP and Draft Operation Agreement.

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

The Deputy General Manager

Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001

Sub: Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode

Dear Sir,

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

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

Date:
Place:

Yours
faithfully, (Signature of the Authorized
Signatory)
(Name and Designation of the Authorized Signatory)
(Name and Seal of the Bidder / Lead Member)

Note:

1. Wherever applicable, evidence of the valid registration of the Competent Authority shall be attached.
2. In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

DRAFT OPERATION AGREEMENT

FOR

SELECTION OF SERVICE PROVIDER FOR OPERATION OF ELEVATORS / ESCALATORS IN SHIMLA ON PUBLIC PRIVATE PARTNERSHIP (PPP) MODE

March , 2024

ISSUED BY:

**Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd.
U.S. Club, Shimla , Himachal Pradesh**



Ropeways and Rapid Transport System Development Corporation HP Ltd.

प्रदूषण मुक्त यातायात के लिए हिमाचल की पहल

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OPERATION AGREEMENT

THIS OPERATION AGREEMENT (the “**Agreement**”) is entered into on this the ____ day of _____, 2024 at _____;

BETWEEN

Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd. having its office at **U.S. Club, Shimla , Himachal Pradesh**, acting through its authorized representative _____(hereinafter referred to as the “**Authority**”/ “**RTDC**”, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **First Part**;

AND

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

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

RECITALS:

- A. WHEREAS** the Authority is the rightful owner of the elevators / escalators being installed at three locations- Jakhoo Temple, Vikas Nagar and Middle Bazar in Shimla, Himachal Pradesh, India as marked in **Schedule I** (hereinafter referred to as “**Project Site**” or “**Site**”) and intends to Operate elevators / escalators in Shimla on Public Private Partnership (PPP) Mode (“**PPP**”) (the “**Project**”);
- B. AND WHEREAS** with an objective to seek private sector participation in the Operation of the aforesaid Project, the Authority through Ropeways and Rapid Transport System Development Corporation H.P. Ltd. (“**RTDC**”) undertook the process of selection of a suitable Operator through competitive bidding, after issuing a Request for Proposal document (the “**RFP**”) dated _____ inviting Bids from prospective Bidders to implement the said Project, containing *inter alia* the minimum qualification for a Bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project. Upon detailed evaluation of the submitted Bids, the Authority had accepted the Financial Bid of the Selected Bidder (consortium/sole applicant as the case may be) and issued a Letter of Award (“**LoA**”) vide Letter No. _____ dated _____ to the Selected Bidder requiring *inter alia* the execution of this Agreement within 15 (fifteen) days of issuance thereof.
- C. AND WHEREAS** the Operator has furnished to the Authority, Performance Bank Guarantee No. _____ dated _____ 2024, for an amount of Rs. 10,00,000____/- (Rupees Ten Lakhs Only) drawn on _____.
- D. AND WHEREAS** the Operator acknowledges and confirms that it has undertaken due diligence and audit of all aspects of the Project Site, Project Assets and the Project including technical and

financial viability, legal due diligence, demand parameters and forecast, and on the basis of its independent satisfaction hereby accepts the operation of elevators / escalators and agrees and undertakes to implement the Project at its own cost and expense in accordance with the terms and conditions of this Operation Agreement.

E. AND WHEREAS the Operator hereby accepts the Operation of elevators / escalators and undertakes to implement the Project in accordance to the provisions of this Operation Agreement.

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

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1. **“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
2. **“Act”** means Indian Companies Act, 1956/2013, read in context with the manner of its usage in this Agreement.
3. **“Agreement Date”** means the date of execution of this Operation Agreement.
4. **“Affected Party”** shall have the meaning set forth in Article 27.1.
5. **“Annual Fixed Fee”** means the fee as defined in Article 5.1 of the Operation Agreement.
6. **“Applicable Laws”** means all laws which are applicable to the Project and/or the Operator extending to the State of Himachal Pradesh, having been enacted or brought into force by Government of India or Government of Himachal Pradesh including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
7. **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Operator under Applicable Laws during the subsistence of this Agreement and refer **Schedule V** of this Agreement.
8. **“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Authority, Secretariat for Industrial Assistance, Reserve Bank of India and any other regulatory authority, as may be applicable.
9. **“Appointed Date” or “Effective Date”** means the date on which every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be.
10. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 as amended from time to time and the Rules there under as in force from time to time.
11. **“Associates”** means in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

12. **“Authority”** or **“RTDC”** means Ropeways and Rapid Transport System Development Corporation H.P. Ltd. (RTDC).
13. **“Authority’s Event of Default”** shall have the meaning ascribed to it in Article 22.2.
14. **“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crores (Rupees One Thousand Crore only).
15. **“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of Authority / RTDC and furnished by the Operator to Authority for guaranteeing the due performance of the obligations of the Operator under this Agreement.
16. **“Bank Rate”** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
17. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Operator in response to the Request for Proposals in accordance with the provisions thereof.
18. **“Business Day”** means a day on which banks are generally open for business in the state of Himachal Pradesh in India.
19. **“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/Consortium Members} together with {its/ their} Associates, in the total Equity to decline below (i) 100% (one hundred percent) for a period until the 5th (fifth) anniversary of the Commercial Operations Date (i.e. the Date of Commencement of Commercial Operations or **“COD”**); and (ii) 51% (fifty one per cent) thereof until the end of Operation Period; provided that the Consortium Members whose technical capacity and financial capacity was used to satisfy the eligibility shall subscribe and collectively maintain 100% of subscribed and paid up equity share capital in the Operator with lead member holding atleast 51% of and subscribed and paid up equity share capital of the Operator until the 5th Anniversary of COD of the project and further not less than 51% of subscribed and paid up equity share capital till the end of Operation Period with Lead Member holding atleast 26% of subscribed and paid up equity share capital; provided further that any material variation (as compared to the representations made by the Operator during the Bidding Process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be) in the proportion of the equity holding of {the Selected Bidder/any Consortium Member} to the total Equity, if it occurs prior to COD and/or 5th anniversary of the COD and/or end of Operation Period (as the case may be) of the Project, shall constitute Change in Ownership.
20. **“Clearance(s)”** means, as on the date of execution of this Agreement, any and all consents, no-objections, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.
21. **“Change in Laws”** means the occurrence of any of the following after the date of Bid:
- a. the enactment of any new Indian law as applicable to the State;
 - b. the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
 - c. the commencement of any Indian law, as applicable to the State, which has not entered into

effect until the date of Bid; and

- d. a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or any change in the rates of any of the Taxes that have a direct effect on the Project.

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

23. **“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Himachal Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Operator under or pursuant to this Operation Agreement.

24. **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Authority or Operator under Article 4.3.

25. **“Operation Agreement”** or **“Agreement”** means and includes this signed Agreement (including the Schedules of the Agreement, the “Letter of Award” issued by the Authority, the written clarification(s), addenda, amendments, etc. to the RFP Document issued to the Bidders and all other documents/papers attached as annexure).

26. **“Operator”** means -----, the Selected Bidder itself, for the sole purpose of implementing this Project, having its registered office at ----- and includes successors and permitted assigns.

27. **“Operator's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include plant and materials.

28. **“Operator's Representative”** means the Person appointed by Operator under Article 8.5.

29. **“Operation Period”** is the period of 5 (five) years extendable further at the discretion of the Authority for which this Operation is granted, commencing from the Compliance Date. Provided further that, the Operator is not in default of any of its obligations under the Agreement, is operating the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation Agreement and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project

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

31. **“Consortium”** means the group of entities that have jointly submitted the Bid for the Project.

32. **“Consortium Members”** means -----, ----- &-----¹.

33. **“Operation Agreement Completion Certificate”** means the certificate issued under Article 16.

34. **“Cure Period”** means the period specified in this Agreement for curing any breach or default of

any provision of this Agreement by the Party responsible for such breach or default and shall:

- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b. not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- c. not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.

35. **“Completion Period” or “Time for Completion”** means completion of Operation of elevators / escalators at the three sites i.e. Jakhoo Temple, Vikas Nagar & Middle Bazar including all facilities and components of the project as specified in Schedule III of this agreement and Scope of Work as set out under the RFP. The Completion Period is reckoned from the Compliance Date to the date of issue of Permission to commence operations in accordance with the Project Implementation Schedule as per Article 8.6.

36. **“Completion Date”** means the date by which the overall operation of the Project is completed in accordance with the provisions of this Agreement.

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

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

39. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a. the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the "**principal**") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority's Default; and
- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

40. **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority to the Operator, and any modification, extension or replacement thereof from time to time in

force.

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

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

43. **“Easementary Rights”** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of activities of the Operator related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.

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

45. **“Event of Default”** means the Operator Event of Default and/or Authority Event of Default, as the case may be.

46. **“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Operator for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

48. **“Financial Close”** or **“Financial Closure”** - Deleted

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

50. **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.

51. **“Financing Package”** or **“Financing”** means the financing package of the Project furnished by the Operator indicating the Total Project Cost and the means of financing thereof and shall be deemed to

have been modified to the extent as submitted to the Lenders and as approved by the Lenders for the purposes of funding the Project.

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

53. **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Operator and in operation and maintenance of the Facilities in accordance with this Operation Agreement, Applicable Laws, and Clearances, reliability, safety, environment protection, economy and efficiency.

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

55. **“GoI”** means the Government of India.

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

57. **“Gross Revenue”** or **“Gross Annual Revenue”** or **“Annual Gross Revenue”** shall mean for any year the total pretax Project Revenue derived by the Operator from the operation in terms of this Agreement as certified by the Statutory Auditors of the Operator in that year.

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

59. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 24.

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

61. **“Lender(s)”** means financial institutions, banks debenture holders, international credit agencies and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Operator under any of the Financing Agreements 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 Operator, if allowed by the Authority.

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

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

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

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

66. **“MoT”** means Ministry of Tourism, Government of India.

67. **“MoT Guidelines”** shall mean the guidelines issued by the Ministry of Tourism, Government of India as applicable to the Project

68. **“Operation Period”** is the period commencing from the Commercial Operations Date and ending at the Transfer Date.

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

70. **“Performance Standards”** means the standards for the operation of the Elevators / Escalator as set forth in **Schedule III** of the Operation Agreement;

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

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

73. **“Project”** means, subject to the provisions of this Operation Agreement, i) Operation of the elevators / escalators being installed at three locations- Jakhoo Temple, Vikas Nagar and Middle Bazar in Shimla on Public Private Partnership (PPP) Mode as per MoT specifications and guidelines as mentioned in relevant Annexures to this Agreement and issued / modified / amended from time to time and as per Acts Rules and Guidelines Government of Himachal Pradesh and issued/ modified / amended from time to time, at the Project Site including all activities incidental thereto at the Project Site including but not limited to the furniture, fixtures and equipment, other related facilities installed or affixed and all additions; modification, alterations and extensions thereto as may be effected by the Operator from time to time to meet MoT regulations and rating requirements; (ii) levy, collection, retention and appropriation of the Project Revenues etc.; (iii) insurance of the Project Facilities for the purposes of providing the services on a continuous basis; and (iv) transfer of the project facilities to the Authority at the end of the Operation Period or on prior termination of the Operation Agreement due to Operator’s Event of Default or otherwise on **‘as is where is basis’** as a going concern.

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

75. **“Project Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.

76. **“Project Facilities”** or **“Facilities”** means the Project including facilities and amenities to be provided in the **elevators / escalators** .

77. **“Project Implementation Schedule”** means the Operator’s Project implementation proposal and its time frame as accepted by the Authority in accordance with Article 8.6.

78. **“Project Insurance”** means the insurance taken out by or on behalf of the Operator pursuant to Article 2 and 26 of this Operation Agreement.

79. **“Project Revenues”** means all sources of revenues from the Project as defined in Article 2.3.1.

80. **“Project Site”** or **“Site”** means the existing elevators / escalators at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazar in accordance with the Site Plan, Layout and Drawings given by the Authority to the Operator, on, under, in or through which the Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the dependencies are to be executed, more particularly delineated in **Schedule I**.

81. **“Project Assets”** means all tangible and intangible assets relating to the Project Site including, but not limited to, (a) rights over the Project Site in the form of license, sub-license, right-of-way or otherwise; (b) tangible assets such as civil works and equipment, all buildings, pavements, substructures and superstructures, movement and parking areas, all internal and external services, drainage facilities, sign boards, HVAC works, electrical works, equipments, etc.; (c) Project Facilities created on the Site; (d) all rights of the Operator under the Project Agreements/Documents; (e) financial assets, such as receivables, security deposits, cash and investments; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project.

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

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

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

85. **“Schedules”** mean the Schedules to this Operation Agreement.

86. **“Scheduled Completion Date”- Not Applicable**

87. **“Security Interest”** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.

88. **“Statutory Auditor”** means an independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as independent statutory auditor of the Operator

under the provisions of Act including any statutory modification or re-enactment or replacement thereof, for the time being in force.

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

90. **“Subordinated Debt”** means any borrowings by the Operator subordinated to the financial assistance provided by the Lenders for meeting the Total Project Cost but does not include any interest thereon.

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

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

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

94. **“Termination Date”** means the date on which this Operation Agreement terminates by efflux of time or by issuance of a Termination Notice.

95. **“Termination Notice”** means the communication issued in accordance with this Operation Agreement by a Party to the other Party for terminating this Operation Agreement.

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

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

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

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

100. **“User Charges”** means the charges, levies, tariffs, prices, sub-license fees, charges or all sources of revenue or amounts of money by whatever name called levied, demanded, collected, retained and

appropriated by the Operator from Users or under sub-license or subcontracting arrangements.

101. "**Vesting Certificate**" shall have the meaning set forth in Article 23.4.

102. "**Variation**" means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Operator.

103. "**Works**" means the design, up-gradation, completion, testing and commissioning, operation and maintenance and rectifying or/and remedying of defects of the buildings, services, facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Operation Agreement.

1.2 Principles of Interpretation

In this Operation Agreement, unless the context otherwise requires:

- i. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- ii. Reference to laws of Government of Himachal Pradesh (the "**GoHP**"), laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Himachal Pradesh;
- iii. The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- iv. Terms and words beginning with capital letters shall have the meaning as defined in this Agreement including the Schedules;
- v. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- vi. Words importing the singular shall include the plural and vice-versa where the Operation requires.
- vii. Any reference to day shall mean a reference to a calendar day;
- viii. Any reference to month shall mean a reference to a calendar month;
- ix. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- x. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- xi. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- xii. Any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- xiii. Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the

- last day of any period computed under this Agreement is not a business day (the “**Business Day**”), then the period shall run until the end of next business day; and
- xiv. The damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

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

1.5 Priority of Documents

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

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

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

1.6 General

Unless expressly provided otherwise in this Agreement, any documentation required to be provided

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

ARTICLE 2: SCOPE OF THE WORK

2.1 Scope of the Work

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

- I.** The Operator shall undertake all the activities pertaining to and incidental to the Operation of elevators / escalators at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazar including, but not limited to the following:
 - i. Taking over of the Project Site on “as is where is basis” and plan, design, finance and upgrade the facility, marketing, providing relevant assets, equipment, clearances/approvals, providing ancillary services and amenities related to the Project. The same should be in sync with the concept presented to the Department during bidding process and subsequently finalised and approved after incorporating modifications, if any sought by RTDC and also as per terms of the RFP, Operation Agreement and Schedules thereof.
 - ii. Conform to and comply with the Acts, Rules and Guidelines of Government of Himachal Pradesh, as amended from time to time.

II. Besides the above works the Operator shall have the following other Obligations as well:

- i. The Operator shall be responsible for seeking all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, bar license, etc.
- ii. The Operator shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the operations phase also all relevant insurances as per statutory requirements or otherwise should be in place.
- iii. The Operator shall maintain the entire premises in accordance with Good Industry Practice.
- iv. The Operator shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- v. Meeting the requirements and norms laid down by the competent authorities regarding Operation of the Project Facilities, if any.
- vi. Maintaining the standards of elevators/escalators and providing facilities applicable as per guidelines of Ministry of Tourism, Government of India, in terms of offerings, ambience and services as amended from time to time and avail and renew the certification from MoT in this regard.
- vii. Housekeeping services to be provided on daily basis.
- viii. Performance and fulfillment of all obligations of the Operator in accordance with the provisions of the Operation Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under the Operation Agreement.
- ix. The Operator shall be responsible for payment of all taxes including GST as per GoI norms issued in this regard from time to time, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.

- x. Conform to and comply with the Acts, Rules and Guidelines of Government of Himachal Pradesh, as amended from time to time.

2.1.2 The Operator shall operate the Project consisting of all Facilities as per prescribed Guidelines .

2.1.3 The Operator shall obtaining relevant accreditation from the concerned accreditation agency within 15 (fifteen) days from the date of Permission to Commence Operations. The Operator is expected to ensure the timely renewal of such accreditation which should remain valid and subsisting throughout the Operation Period. Failure to renew/restore such accreditation or withdrawal thereof shall constitute Operator Event of Default which may lead to termination in terms of this Operation Agreement.

2.1.4 The Operator shall undertake the Operation of the elevators / escalators in accordance with the provisions of this Operation Agreement and the Schedules hereof.

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

2.1.6 The Operator shall be responsible for performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.

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

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

2.2 Bye-Laws & Norms

- i. While undertaking operations of the Project, the Operator shall adhere to all the Applicable Laws inter alia relevant IS Codes and practices, statutory requirements the principles of Good Industry Practices and any other norms as applicable from time totime.
- ii. The Operator shall be responsible for all the Applicable Permits and the Clearances as may be required for the operations of the Project. The Project shall be ready for operation after taking all the clearance(s), within 15 (Fifteen) days of the Compliance Date / Effective Date.

2.3 Revenue Streams

2.3.1 The Operator will be able to recover its investment through various streams of revenue including User Charges of tickets of elevators / escalators, annually pass charges and Advertisement in elevators /escalators (collectively to be called as “**Project Revenues**”).

2.4 Project Components

The capacity and load capacity of the three locations are as below:

S.No	Location	Escalators / Elevators	Capacity	Load Capacity
1.	Jakhoo Temple	Escalator- 4	100 People per minute	21.86 Kw / Escalator (4000 PPHPD)
2.	Vikas Nagar	Elevator – 3	20 People per trip of Lift	25.90 kw/ lift (Motor Capacity)
3.	Middle Bazar	Elevator – 1	20 People per trip of Lift	11 Kw (Motor Capacity)

The Project components include:

S. No.	Location	Component	Elevator/ Escalator
1	Jakhoo Temple	Ticket Counter Space for Advertisement Common Area	2+2 Escalators
2	Vikas Nagar	Ticket Counter Space for Advertisement Common Area	3 Elevators
3	Middle Bazar	Ticket Counter Space for Advertisement Common Area	1 Elevator

2.5 Minimum Development Obligations

Deleted

2.6 Nomenclature of the Project

The Operator shall be allowed to Brand the property.

ARTICLE 3: GRANT OF OPERATION

3.1 The Operation

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Operator and the Operator hereby accepts the Operation for a period of 5 (Five) years extendable further at the sole discretion of the Authority (the “**Operation Period**”) commencing from the Compliance Date / Effective Date including the exclusive right, license and authority during the subsistence of this Agreement, including extension thereof. Provided further that, the Operator is not in default of any of its obligations under the Agreement, is operating the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation Agreement and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project.

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

- i. to complete the Project as per the Scope of Work as mentioned in Article 2 and Schedule III of the Operation Agreement;
- ii. to enjoy complete and uninterrupted access and Right of Way and right to use the Project Site and Project Assets in pursuance of the declaration of license granted in favour of the Operator by the Authority;
- iii. to have access and liberty to operate the Project Facilities during the Operation Period in accordance with the provisions of this Operation Agreement & Schedules hereof. Any upgradation or development done by the Operator in form of any structures or fixtures on the Project Site in respect of the Project shall be deemed to be the property of the Authority and the Operator relinquishes all its rights in such property in favour of the Authority;
- iv. to enjoy exclusive right and authority to carry out the activities in relation to the Project strictly as specified in the Operation Agreement during the Operation Period;
- v. To sub-license the use of the Project to the vendors and thereupon determine, demand, levy, collect, enforce, retain and appropriate charges periodically and revise the same in conformity with the prevailing market rates. Within the limitations of statutory provisions of the Applicable Laws and Good Industry Practice, the Operator shall make all the efforts to maximize the earnings from the associated operations and to keep the Authority informed of actions taken and results thereof;
- vi. to manage, operate and exercise rights over all or any part of the Project Assets without limitation or restriction other than those expressly set out in this Operation Agreement;
- vii. to fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, subcontractors (the “**Subcontractor(s)**”), agents, advisors and consultants without in any way relieving the Operator of its obligations as set out in this Agreement;
- viii. to arrange for all the Applicable Permits and Clearances from the Competent Authorities for the operation of the Project and the Authority shall in no way be liable for the same. Responsibility of getting all necessary approvals pertaining to operations lies with the Operator. Nevertheless, the Authority, without any binding obligation may provide any assistance upon written request from the Operator on best effort basis;
- ix. to exercise such other rights as the Authority may determine being necessary or desirable for the purposes incidental and necessary for operating the Project; and

- x. to bear and pay all expenses, costs and charges incurred for fulfillment of all the Operator's obligations as set out under this Agreement.
- xi. Nothing contained hereinabove, including the act of granting permission to complete the Project at the designated Project Site shall vest or create any proprietary interest in the Project or any part thereof including any permanent fixtures, fittings etc. installed in the Project in favor of the Operator or any person claiming through or under the Operator. The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project/ or any other movable / immovable assets in any manner whatsoever. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2 Actions in Support of the Operation

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

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

3.3 Operation Period

3.3.1. The Operation Period for **“the Project”** shall commence from the Effective Date / Compliance Date and shall extend for a period of **5 (Five) years** from such date (the **“Operation Period”**) unless extended in terms of Article 3.3.2 during which the Operator is authorized to operate the elevators / escalators in accordance with the provisions hereof. For the avoidance of doubt, the Operation Period shall be period of operation.

3.3.2 Not less than 3 (three) months prior to the expiry of the initial Operation Period of 05 years, upon written request from the Operator seeking extension in Operation Period, the Authority may in its sole discretion consider such request of the Operator subject to the conditions that the Operator is not in default of any of its obligations under the Agreement, is running the Project in a satisfactory manner and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project. Provided that, such extension of Operation Period shall not exceed a period of 5 (five) years. In the event, prior to the end of the term of the extended Operation Period granted, the Operator again seeks another extension of the Operation Period, the same may be considered by the Authority at its discretion subject to fulfillment of the aforesaid conditions by the Operator and the same shall not exceed a period of additional 5 (five) years. Provided however, any extension in Operation Period in accordance with this Article 3.3.2 shall be subject to same terms and conditions as contained in this Agreement. Provided further that, not more than 2 (two) extensions of 5 (five) years each in the Operation Period shall be considered by the Authority.

3.3.3. It is hereby made clear that:

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

3.3.4 At the end of the Operation Period or early termination of this Agreement for any reason whatsoever, all rights given under this Operation Agreement shall cease to have effect and the Project Site, elevators /escalators with all the fixtures and other assets as associated with the project on ‘**as is where is basis**’ shall revert to the Authority as a “**going concern**” without any obligation of the Authority to pay or adjust any consideration or other payment to the Operator.

3.4 Completion Period – Not Applicable

ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary, limited aspects of the Operation Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Operation Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of 15 (fifteen) days from the Effective Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent (the “**Conditions Precedent**”) of the Operator.

4.1 Conditions Precedent for the Authority

The Authority shall:

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

4.2 Conditions Precedent for Operator

The Operator shall:

- i. incorporate the necessary suggestions/ amendments proposed by the Authority, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Authority;
- ii. provide an undertaking that all of the Representations and Warranties of the Operator set forth in Article 17 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- iii. provide copies (certified as true copies by an authorized officer of the Operator) of the constitutional documents of the Operator.
- iv. Provide copies (certified as true by the Director of the Operator) of all resolutions adopted by the Board of Directors of the Operator authorizing the execution, delivery and performance of this Agreement by the Operator;
- v. Provide from the Indian Legal Counsel of the Operator a legal opinion with respect to the authority of the Operator to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;
- vi. prepare and submit a Project Implementation Schedule as specified in Article 8.6.1;
- vii. submit safety plans and procedures as per Article 8.15;

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

4.3 Obligations to satisfy Condition Precedents

- 4.3.1 Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 15 (fifteen) days of signing the Agreement (Agreement Date) which shall not extend beyond 30 (thirty) days as mutually agreed between the Parties.
- 4.3.2 Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance (the “**Certificate of Compliance**”) with Conditions Precedent. The later of the date of issue of Certificate of Compliance to the Operator or the Authority shall be the Compliance Date or Effective Date or Appointed Date, whereupon the obligations of the Parties under this Operation shall commence and whereon the Authority shall issue the Certificate of Compliance to the Operator.
- 4.3.3 Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Non-fulfillment of Conditions Precedent

- 4.4.1 In the event that any of the Conditions Precedents relating to the Operator have not been fulfilled within 15 (fifteen) days of the signing of this Agreement and also, the Authority has not extended or waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Operator or persons claiming through or under it.
- 4.4.2 In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure, the Authority shall pay to the Operator Damages of an amount equivalent to i.e. 0.01% of the Performance Security for each day’s delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 5% of the Performance Security.
- 4.4.3 In the event that (i) the Operator does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within a period of 15 (fifteen) Days unless extended from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Operator shall pay to the Authority, Damages of an amount equivalent to i.e. 0.05% (zero point zero five per cent) of the Performance Security for each day’s delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of upto 10% of the Performance Security.
- 4.4.4 In the event the Authority has terminated this Agreement under Article 4.4.1. due to non-fulfillment of Conditions Precedent by the Operator, the Authority shall not be liable in any manner whatsoever to the Operator or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Operator.
- 4.4.5 In the event that the Project Site has been delivered to the Operator on the ‘as is where is basis’

prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site and Project Assets shall immediately revert to the Authority, free and clear from any Encumbrances on 'as is where is basis', irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

ARTICLE 5: CONSIDERATION TO THE AUTHORITY

5.1 Annual Fixed Fee (AFF)

- 5.1.1 In consideration of the rights, privileges and interests granted by the Authority to the Operator in terms of this Agreement, the Operator shall pay to the Authority a fixed amount of Annual Fixed Fee (**the “AFF”**) as quoted in its Financial Bid exclusive of taxes and GST at the prevailing rates. The Annual Fixed Fee shall be increased at the rate of 5% (five percent) every year.
- 5.1.2 The AFF shall be payable by the Operator to the Authority in the manner set forth in the Operation Agreement. These payments shall be made periodically by Demand Draft /NEFT / RTGS in the manner set forth in the Operation Agreement.
- 5.1.3 The first AFF shall be due and payable on a date of signing of the Contract Agreement, the Operator shall deposit the AFF on on signing of the contract.

Illustration : In case the Effective date is 01.04.2024 and COD is 15.04.24 then the first installment of the AFF shall be paid on 01.04.24, and second installment for the year shall be paid on 01.10.24. For subsequent years the due date for payment of AFF shall be 1st of April and 1st of October of each financial year.

- 5.1.4 In the event of delay up to 45 (forty five) days in payment of AFF by the Operator, the Operator shall be required to pay to the Authority an interest at the rate of 16% (sixteenpercent) per annum on the due and unpaid amount of AFF for the period of delay. In the case of delay beyond 45 (forty five) days, it shall be considered as Operator Event of Default.
- 5.1.5 The time prescribed for making payment of the AFF shall be the essence of this Agreement. Non-Payment of the AFF shall be accounted as Operator Event of Default and subsequently form a ground for termination of this Agreement.

5.2 Adjustment of the Annual Fixed Fee (AFF)

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

5.3 Performance Security

- 5.3.1 The Operator shall, for the performance of its obligations hereunder provide to the Authority, before signing of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum of **Rs. 10 Lakhs (Rupees Ten Lakh Only)**, in the form set forth in **Schedule-IV** (the **“Performance Security”**). Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Operator within the stipulated time period, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out

of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

5.4. Appropriation of Performance Security

Upon occurrence of a Operator Event of Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 45 (forty five) days thereof, replenish, in case of partial appropriation, to its original level of the applicable Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 22. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Operator shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Operator Default or to meet any Condition Precedent, and in the event of the Operator not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 22.

5.4 Release of Performance Security

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

ARTICLE 6: RIGHTS AND TITLE OVER THE PROJECT SITE

6.1 Transfer of Project Site on License

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

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

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

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

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

6.3 Access rights of the Authority and others

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

6.4 Property Tax

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

ARTICLE 7: OBLIGATIONS OF THE AUTHORITY

7.1 General Obligations

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

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

Any liability arising out of in providing the Project Site free of Encumbrances shall be borne solely by the Authority. The Authority shall indemnify the Operator and shall hold it harmless from any claim or consequential cost that may arise as a result of any such transfer of the Project Site.

7.2 Obligations of Authority regarding Project Site

- 7.2.1 The Authority agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - i. the Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.1, including any compensation required to be paid for acquisition of such Project Site. Further, the Authority shall not hold Operator responsible for all costs, expenses or charges incurred in making available the Project Site free from all Encumbrances on 'as is where is basis' to the Operator.
 - ii. the Authority shall, upon written request of the Operator, assist the Operator in getting permissions and exemptions as may be required under Applicable Laws and regulating land use as applicable in State of Himachal Pradesh so as to facilitate the Operator in enjoying complete and uninterrupted Right of Way in respect of the Project Site on "as is where is basis" and holding the area of land comprising of the Project Site.
 - iii. the Authority shall ensure that from the date of the Certificate of Compliance and till the completion of the Operation Period, the Operator has access to the Project Site for the purpose of carrying out the Operator's obligations under this Agreement.
 - iv. if the Operator suffers delay or incurs cost as a direct result of failure on the part of the Authority to perform its obligation under this Article 7.2, the Operator shall give notice of the same to the Authority. Upon receipt of such notice Authority shall proceed to take remedial measures and make compensatory adjustments in the Operation Period in accordance with Article 7.3.
 - v. the Authority may grant to the Operator right to advertise and set up and display hoardings, billboards and other information panels at the Project Site or to grant license to such rights against payments, provided that such rights shall be exercised in accordance with the

- Applicable Laws and orders, decrees, direction of courts and regulations of concerned Authorities;
- vi. the Authority shall ensure that all the obligations with regards to completion of its scope of work as per the provisions of RFP, this Agreement and schedules thereof shall be undertaken, completed and complied with before handover of the project site to the Operator.

7.3 Authority's Determination

- 7.3.1 When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Operation Period, it shall consult with the Operator in an endeavor to reach an agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the Operation Period. The Authority's determination on value, cost and adjustment of the Operation Period shall be intimated to the Operator within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- 7.3.2 Deleted
- 7.3.3 Except Termination Payment or else as expressly provided for in this Operation Agreement, any payments to the Operator by the Authority shall be made through the mechanism of adjustment to the Operation Period or payments to the Authority.

ARTICLE 8: OBLIGATIONS OF THE OPERATOR

8.1 General Obligations

8.1.1 The Operator shall observe, undertake, comply with and perform the following obligations, in addition to and not in derogation of its obligations elsewhere set out in this Operation:

- i take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the provisions of Article 4.1 and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Operation Agreement;
- ii obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority, for infrastructure facilities including power, water supply, drainage & sewerage, firefighting, telecommunications etc., as and when they may be required, for the Operator and its employees to perform their obligations under this Operation Agreement;
- iii comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Subcontractors;
- iv carry out the Works strictly in accordance with the provisions of this Operation Agreement, the Technical Requirements, Performance Standards, the Project Implementation Schedule and the Schedules of this Operation Agreement, and all works not mentioned in this Operation Agreement but which may be inferred to be necessary for safe, reliable and efficient completion and operation of the project;
- v obtain for the elevators / escalators accreditation from the concerned accreditation agency in terms of the MoT Guidelines attached in the Annexure of this document, within 3 (three) months from the date of Permission for Commencement of Commercial Operations;
- vi ensure that the Facility shall be used for the intended purpose only as agreed between the Parties;
- vii ensure that the use of the Project Site is restricted to the Article 2 and Schedule III of this Agreement.
- viii carry out its obligations/duties with regard to the Operations of the Project in accordance with the Schedules to this Operation Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is implied by this Operation Agreement, or arises from any obligation of the Operator, and all duties not mentioned in this Operation Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
- ix operate the Project and all its components including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and shall remedy any defects during the Operation Period. The Operator shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation (including remedying of defects);
- x be responsible from the date of issuance of the Certificate of Compliance for all liabilities arising out of Operation of the Project;
- xi take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods, operation of the Project, irrespective of any approval or consent by the Authority;

- xii be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance;
- xiii ensure that no structural damage is caused to the existing building(s) and other permanent structures at the Project Site as a result of Operator’s activities or any of its agents, contractors, tenants etc.;
- xiv pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, services tax, stamp duty, registration charges and any other legal documentation charges, if any, in respect of elevators / escalators including Project Site, as leviable;
- xv duly supervise, monitor and control the activities of subcontractors, their employees and agents as may be necessary;
- xvi ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Operator’s obligations under this Agreement;
- xvii obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- xviii take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;
- xix not to permit any contractor, sub-contractors or other person, claiming through or under the Operator, to create or place any Encumbrances or security interest (the “**Security Interest**”) over all or any part of Project Site or the Project Assets (the “**Project Assets**”) or on any rights of the Operator therein or under this Agreement, save and except as expressly permitted in this Agreement;
- xx ensure that such Project Site remains free from all Encumbrances, encroachments and trespass during the entire Operation Period;
- xxi provide all assistance to the Independent Expert/ independent auditor/ arbitrator as applicable and as it may require for the performance of their duties and services;
- xxii at all times, to afford access to the Project Site to the authorized representatives of Authority, other persons duly authorized by any governmental agency having jurisdiction over the Project, to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice;
- xxiii remain solely and primarily responsible to Authority for observance of all the provisions of this Operation Agreement on behalf of the Operator, its employees and representatives and further on behalf of the sub- licensees, their employees and agents and any person acting under or for and on behalf of the Operator or the sub-licensees, the sub-contractor as fully as if they were the acts or defaults of the Operator, its agents or employees;
- xxiv remain liable for and to indemnify, protect, defend and hold harmless Authority, Authority’s officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Operator to discharge its obligations under this Article 8.1 and to comply with the provisions of ApplicableLaws;
- xxv acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly;
- xxvi remain at all times, responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Operator from its obligations or liability hereunder;
- xxvii the Operator may undertake operations of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Operator shall remain solely responsible to

- meet the scope of work as mentioned in this Agreement;
- xxviii pay in a timely manner the Annual Fixed Fee at all time during the Operation period;
- xxix timely furnish the Performance Security as per the terms of the Operation Agreement;
- and
- xxx make good the shortfall in the Performance Security in a timely manner.

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

8.2.1 The aggregate share / shareholding of the Consortium Members along with their Associate/s (in case of Consortium) or Associate/s (in case of Individual Bidder) in the subscribed and paid up equity share capital of the Operator shall be not less than:

- i 100% (one hundred percent) until the 5th (fifth) anniversary of the Commercial Operation Date of the Project.
- ii 51% (fifty one percent) for a period until the end of Operation Period.

8.2.2 In case of Consortium, the Lead Member of the Consortium, Technical and O&M member or any other member whose experience has been evaluated for the purposes of the RFP shall subscribe and maintain a minimum equity shareholding / share of 100% (one hundred percent) collectively in the stipulated subscribed and paid up equity share capital of the Operator; provided further that the lead member shall continue to maintain a minimum equity shareholding of 51% (fifty-one percent) in the stipulated subscribed and paid up equity share capital of the Operator as specified under Article 8.2.2 at all time during the Lock in Period i.e. until the 5th (fifth) anniversary of the Commercial Operation Date of the Project. Provided further that, the Lead Member of the Consortium shall continue to maintain a minimum equity shareholding of 26% (twenty six percent) in the stipulated subscribed and paid up equity share capital of the Operator at all time until the end of Operation Period.

This holds for the single entity bidder also and hence no Bidder who has 100% (one hundred percent) equity in the Project can dilute it to a level below 100% (one hundred percent) at any time until the Commercial Operations Date. Remaining stake can be diluted as per the provisions of Article 8.2.1.

8.2.3 At no stage during the Lock in Period shall any change in the shareholding pattern be made by the Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make the Consortium Members or Associates or the Operator non-compliant with Articles 8.2.1. and 8.2.2 above.

In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Authority.

8.3 Information Regarding Project Site

8.3.1 The Operator reaffirms and assumes responsibility for all the data and designs, tests, tourist data and projections and other data used in formulating its Bid.

8.3.2 The Operator shall be deemed to have inspected and examined the Project Site before

submitting the Bid, as to:

- i The form and nature of the Project Site, including the Project Site levels conditions, adjoining water bodies, local habitats etc.;
- ii The extent and nature of the work and materials necessary for the execution and completion of the works and the remedying of any defects;
- iii The means of access to the Project Site and the accommodation required for labour camps, installation of equipment, etc.;
- iv Availability of building materials, water, power etc.;
- v The requirements of operations; and
- vi Any other existing condition, which has a bearing on the working conditions during Operation Period.

8.3.3 The Operator shall, by submitting its Bid, be deemed to have carried out such due diligence, inspection, etc. and the Operator assumes full responsibility for the data in its Bid and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgment, consistent with Good Industry Practices. The Operator shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Bid.

8.4 Sufficiency of Operation Period

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

8.5 Operator's Representative

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

8.5.2 The person named as the Operator's Representative under this Operation Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Operator's Representative, the Operator shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Operator's Representative.

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

8.5.4 The Operator's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Operator's Representative, specifying the powers, functions and authorities being delegated or revoked. Operator's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Operator's Representative. Any such delegation shall not relieve the Operator's Representative of its obligation and duties under this Agreement.

8.6 Work Programmes

Deleted

8.7 Total Quality Management

During the Operation Period, the Operator shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Operation Agreement. The Operator shall maintain adherence to such Performance Standards and Technical Requirements throughout the operations Period of the Project.

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

8.8 Progress Reports

Deleted

8.9 Coordination

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

- i The workmen of the Authority;
- ii Any other persons employed by the Authority and their workmen; and
- iii The workmen of any legally constituted public authorities that may be employed in the execution on or near the Project Site of any work not included in this Operation Agreement, which the Authority may require.

8.10 Sub – contracting

Deleted

8.11 Plant and Equipment

Deleted

8.12 Access for Supervision

- 8.12.1 The Operator shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of complete and uninterrupted Right of Way in respect of the Project Site thereof to the representatives of or Persons duly authorized by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the Facilities thereon and to investigate any other matter within its authority and the Operator shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.

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

8.13 Materials

Deleted

8.14 Supply of Power, Water and Other Consumables

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

8.15 Safety

Within 1 (one) month from the Agreement Date, the Operator shall provide to the Authority details of its safety plans and procedures for the Works and services. The Operator shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Operation Agreement, the Operator shall, from the commencement of Works on the Project Site until the expiration of this Operation Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the Facilities. The Operator shall be responsible in the operation of machinery and equipment, and any other work and to take all precautions to ensure safety of the staff, laborers and public.

8.16 Environmental Measures

- 8.16.1 The Operator shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property in the vicinity resulting from operations of elevators / escalators.
- 8.16.2 The Operator shall dispose off the waste/garbage as per the Applicable Laws and ensure that the

users do not litter in an around the Project Facility.

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

8.17 Hazardous Materials

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

8.18 Treasures/Fossils

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

8.19 Project Site Clearance

8.19.1 During the execution of the Works, the Operator shall keep the Project Site free from all unnecessary obstruction and shall store its Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Equipment or surplus materials.

8.19.2 The Operator shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.

8.19.3 Within 10 (ten) days of Permission to Commence Operations, the Operator shall clear away and remove, from the Project Site, all Operator's Equipment, surplus materials, wreckage, rubbish, other debris and temporary works. The Operator shall leave such areas and works in a clean and safe condition to the satisfaction of Authority on 'as is where basis'. Except that the Operator shall be entitled to retain on any part of the ProjectSite, until the expiry of the Operation Period, such Operator's Equipment, materials

and temporary works as required by it for the purpose of fulfilling its obligations under this Operation Agreement in respect of the operations of the Project.

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

8.20 Project Site Security

The Operator shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of required Equipment and other things required for the completion of the Works, services and operation of the Project Facility unless otherwise stated in this Operation Agreement:

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

8.21 Limitations

8.21.1 The Operator shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Operation Agreement.

8.21.2 The Operator shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

8.22 Mutual Obligations of Parties

Each Party shall:

- i. comply with and perform its respective obligations under this Operation and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party.
- ii. carry out their respective obligations during the Operations Period.
- iii. understand that the title to and ownership of the Project Site shall at all times vest in the Authority and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Operator or Persons or any other Third Party claiming by, under or through the

Operator.

- iv. understand that the Operation granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Operation, upon the termination of this Operation Agreement for any reason whatsoever.

ARTICLE 9: PROJECT DOCUMENTS

9.1 Project Documents

- 9.1.1 The Operator shall prepare Project Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Authority shall have the right to review and inspect the Project Documents.
- 9.1.2 Each of the Project Documents shall, when considered ready for use, be submitted to the Authority for review. In this Article, “**Review Period**”, means the period required by the Authority, which unless otherwise stated shall not exceed 15 (fifteen) days, calculated from the date on which the Authority receives the Project Documents and the Operator's notice that it is considered ready, both for a review in accordance with this Article, and for its subsequent use. If the Authority, within such Review Period, notifies the Operator that a Project Document fails (to the extent stated) to comply with some Technical Requirements, it shall henceforth be rectified, resubmitted and reviewed in accordance with this Article, at the Operator's cost.
- 9.1.3 For each part of the Works, and except to the extent that the prior consent of Authority shall have been obtained:
- i If the Operator wishes to modify any design or document, which has previously been submitted for such review, the Operator shall immediately notify Authority and shall subsequently submit revised documents to the Authority for review.
- 9.1.4 If Authority instructs that further Project Documents are necessary for carrying out the Works, the Operator shall, upon receiving instructions thereof, prepare such Project Documents.
- 9.1.5 In case there are errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Project Documents and the Works that have been identified in the defective Project Documents shall be rectified by the Operator at its own cost.
- 9.1.6 No comment made by Authority in relation to or any failure to comment on the Project Documents within the Review Period shall constitute approval of such Project Documents.
- 9.1.7 Review of the Project Documents by Authority shall neither relieve the Operator of its obligations, responsibilities and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

9.2 Design Warranty

Deleted

9.3 Technical Requirements/ Performance Standards

- 9.3.1 The completed Works and services, the operations shall comply with Technical Requirements, regulations applicable to the Project or its components, Good Industry Practices and the minimum Performance Standards specified in the Schedules hereof and the Technical Requirements or as defined by Applicable Law. References in this Operation Agreement to

Technical Requirements, regulations applicable to the Project or its components and Good Industry Practices shall be understood to be references to the edition applicable on the Agreement Date, unless stated otherwise. If substantially changed or new applicable Technical Requirements or regulations come into force after the Agreement Date, the Operator shall submit amended proposals for compliance with such new standards/ requirements to the Authority. In the event that the Authority determines that such proposals are found necessary, expedient and warranted, it shall treat this as a Variation in accordance with Article 18.

9.3.2 The Operator shall be liable for and shall indemnify, protect and hold harmless at all times, the Authority, the Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the Operator's failure to comply with the Applicable Laws in relation to Operations of the Project.

9.4 Patents/ Copyright

Deleted

9.5 Levies

Except otherwise stated in this Operation Agreement, the Operator shall pay all tonnage, levies, cess, royalties, rent and other payments or compensation, if any, for materials required for the completion of operations.

ARTICLE 10: LABOUR

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

10.1 Engagement

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

10.2 Information on Labour and Equipment

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

10.3 Labour Laws

The Operator shall ensure that all labour laws, rules and regulations will be followed and the Operator shall be the primary employer of labour employed by it for the Project. The Authority or any of its officers, employees, and representative shall in no way be responsible for any of the obligations, whether statutory or otherwise, towards any of the employees hired by the Operator in relation with the Project. Operator shall abide by the state/ applicable laws while employing labour/ staff for the project in order to maintain prescribed proportion of locals in the staff so deployed.

10.4 Labour Insurance

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

ARTICLE 11: MATERIALS AND WORKMANSHIP

11.1 Execution

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

11.2 Inspection

The Authority shall be entitled, during preparation at any places where Works are being carried out, to inspect and examine materials and workmanship, and to check the progress thereof of all Works under this Operation Agreement. The Operator shall give the Authority full opportunity to inspect and examine any Works on Project Site or wherever being carried out.

11.3 Rejection

Deleted

11.4 Ownership

Each item of required Materials shall be the property of Operator till the expiry of the Operation Period or upon the premature termination of this Operation Agreement. The Operator shall assume full responsibility for the plant and machinery, materials and Works at the Project Site.

ARTICLE 12: COMMENCEMENT TIME AND DELAYS

12.1 Commencement

12.1.1 The rights and obligations of the Parties under this Operation Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Operator elects to carry out prior to the Effective Date including investigations, surveys, design, etc. shall be entirely at the risk and cost of the Operator.

12.1.2 The Operator shall not be permitted to commence work on any part of the Project Site prior to the issuance of the Certificate of Compliance under Article 4 of this Operation Agreement.

12.1.3 Any delay on the part of the Authority (unless such delay is contributed by the Operator) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

12.2 Time for Operation

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

12.3 Progress

Deleted

12.4 Delay in Completion- Deleted

ARTICLE 13: DELETED

ARTICLE 14: COMPLETION OF PROJECT

Deleted

ARTICLE 15: OPERATIONS PERIOD

15.1 Commencement and Duration

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

15.2 Obligations of the Operator during Operations Period

- 15.2.1 During the Operations Period the Operator shall be responsible for performing all the obligations and complying with the Performance Standards laid down in Schedule III of this Operation Agreement.
- 15.2.2 In the event of failure to perform the obligations or comply with the Performance Standards and rectifying any defects within permissible time limits or any extension thereof, laid down in **Schedule III and MoT Guidelines as mentioned in the Annexure**, the Operator shall be liable to a penalty which shall not exceed 0.05% of Performance Security for each day until rectification of such defect/damage subject to maximum of 10% of Performance Security for each lapse in compliance in the performance standards or MoT Guidelines / Acts, Rules and Guidelines of GoHP. It is clarified that the penalty amount should not exceed the amount of Performance Security which in turn shall lead to Operator Event of Default Article 22.1. The Operator shall be liable for replenishing/maintain the Performance Security to its original value.
- 15.2.3 The Operator recognizes and acknowledges the fact that the Project is intended to provide a facility with 3-star or above rating, and the Operator shall have no right to prevent, impede or obstruct any bona fide visitor from using the Project Facility, save and except for regulating such usage under the terms of this Operation Agreement. Under exceptional circumstances, if the Operator apprehends any detriment to the Project Facility it shall seek instructions from the Authority, whose decision in this regard shall be final.
- 15.2.4 The Operator shall remove the defects or damage found by Authority at his own cost and ensure the performance standards are maintained throughout.
- 15.2.5 The Operator is obliged to carry out adjustments, repairs, replacements or modifications during the Operations period to maintain the Works etc. The Authority shall permit the Operator to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the Project Facility, then such request shall only be granted if the Operator's request is reasonable under all the circumstances, having regard to the Operator's obligations to keep the Project operation open during all permitted hours of the day.

15.3 Scope of Work during Operations Period

- 15.3.1 In addition to what is provided elsewhere in this Operation Agreement, the Operator shall have the following obligations and responsibilities during the Operation Period: -
- i. The Operator shall be responsible, at its own cost, for all the maintenance and repairs of

the Project and all its components. The Operator shall also carry out rectification of any defects in the design or implementation of any component of the Works as specified in 15.2 above.

- ii. The Operator shall with due diligence carry out all necessary and periodical tests in accordance with the Applicable Laws. The Operator shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicative by the test results.
- iii. The Operator shall be entitled at its own costs, expenses and consequences to perform the following:
 - a. Institution and supervision of operating policies, principles, systems and procedure for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
 - b. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
 - c. To issue its receipts and invoice in its own name.
- iv. The Operator shall, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.
- v. The Operator shall deploy adequate trained staff to manage complete operations of the elevators/ escalators and other components including Common Area upkeep and Security as per Performance Standards detailed in Schedules to this Agreement.
The Operator shall bear the entire responsibility and liability for operation of the Project.
- vi. The Operator shall be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Operation Agreement.
- vii. Notwithstanding anything contained herein, the Operator shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the project or by reason of deficiency in the service at the Project or otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Operator shall always keep the Authority indemnified in this regard.
- viii. The Operator shall ensure that the highest service standards and good industry practices comparable with elevators / escalators of similar standings will be adopted and followed in the said Project throughout the Operation Period.
- ix. The Operator shall at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Operator.
- x. The Operator shall carry out all checks and maintenance or repair works with adequate

advance notice in such a planned manner that there shall be minimal disruption of the operations of the Project.

- xi. The Operator shall ensure general upkeep of the Project Area in accordance with the development envisaged in terms of this Agreement.

15.4 Reporting

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

15.4.2 The Operator shall also provide the Authority with such reports which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc. The Operator shall also submit to the Authority the following: Upon obtaining knowledge thereof, any of;

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

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

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

15.5 Books and Records

The Operator shall, at its cost:

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

15.6 Accidents

15.6.1 In the event of an accident, the Operator shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Operator's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the

above officials, as it shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Operator shall then arrange for the expeditious removal of the wreckage or debris and for cleaning the Project Site. If any portion of the elevators / escalators suffers any damage, the Operator shall, with the consent of Authority, arrange for the repair and rectification thereof.

15.6.2 The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Operator in accordance with Article 7.3.

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

15.7 Powers of the Authority

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

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

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

ARTICLE 16: OPERATION COMPLETION CERTIFICATE

16.1 Operation Agreement Completion Certificate

16.1.1 Subject to fulfilment of the requirements of the Transfer of the Project set out under Article 34 and upon a request made by the Operator, within a period of 30 (thirty) days from such request, the Authority shall issue the “Operation Agreement Completion Certificate” to the Operator, which concludes the Operator’s liability under this Operation Agreement.

- 16.1.2 Within 15 (fifteen) days of the expiry of the Operation Period, the Operator shall prepare a detailed inventory of all movable and immovable properties forming part of the Project and submit the same to the Authority.
- 16.1.3 The remaining Performance Security furnished by the Operator shall be released only after the issuance of the Operation Agreement Completion Certificate in pursuance of this Article.

ARTICLE 17: REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of the Authority

The Authority represents and warrants to the Operator that:

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

17.2 Representations and Warranties of the Operator

The Operator represents and warrants to the Authority that:

- i It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii It has full power and authority to execute, deliver and perform its obligations under this Operation and to carry out the transactions contemplated hereby;
- iii It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Operation Agreement;
- iv It has the financial standing and capacity to undertake the Project;
- v This Operation constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi It is subject to civil and commercial laws of India with respect to this Operation and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii All the information furnished in the Operator's Proposal is, and shall be, true and correct as on the Effective Date;
- viii The execution, delivery and performance of this Operation 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 Operator's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- ix As on the date of the Agreement, there are no actions, suits, proceedings, or investigations pending or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Operator under this Operation or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Operation Agreement;
- x As on the date of the Agreement, the Operator has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Operation Agreement;
- xi The Operator has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Operation Agreement;
- xii The aggregate equity share holding of the Consortium Members and their Associates (in case of a Consortium) or equity share holding of the Associates (in case of individual Bidder) in the issued and paid up equity share capital of the Operator are and shall remain in accordance with the requirements stipulated in Article 8.2;
- xiii Each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Operator entering into this Operation and has agreed to and unconditionally accepted the terms and conditions set forth in this Operation Agreement;
- xiv All rights and interests of the Operator in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Operator or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Operator subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Operation Agreement;
- xv No representation or warranty by the Operator contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- xvi The Operator warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to any person by way of commission or otherwise for securing the Operation or entering into of this Operation Agreement or for influencing or attempting to influence any officer or employee of the Authority

17.3 Disclosure

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

ARTICLE 18: CHANGE IN SCOPE

18.1 Change in Scope

- 18.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the **"Change of Scope"**). Any such Change of Scope shall be made in accordance with the provisions of this Article 18 and the costs thereof shall be expended by the Operator and reimbursed to it by the Authority in accordance with Article 18.3.
- 18.1.2 If the Operator determines at any time that a Change of Scope is necessary for providing safer and improved Hospitality Services to the users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 18 or inform the Operator in writing of its reasons for not accepting such Change of Scope.
- 18.1.3 Any works or services which are provided under and in accordance with this Article 18 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

18.2 Procedure for Change of Scope

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

18.3 Payment for Change of Scope- Deleted

18.4 Restrictions on Certain Works

- 18.4.2 Notwithstanding anything to the contrary contained in this Article 18, the Authority shall not require the Operator to undertake any works or services if such works or services are likely to delay the Project COD; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining completion of the Project and issuing the Permission to Commence Operations.
- 18.4.3 Notwithstanding anything to the contrary contained in this Article 18, the Operator shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the estimated market value of the original scope in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of such market value at any time during the Operation Period.

18.5 Financing by the Operator

- Notwithstanding anything to the contrary contained in this Article 18, the Parties may, subject to this Article 18.5 agree on determining the Change of Scope which may be financed partly or

entirely by the Operator, if such arrangement enables the Operator to provide the financing and undertake its recovery in accordance with the provisions of this Agreement.

ARTICLE 19: FINANCIAL CLOSE- Deleted

DELETED

ARTICLE 20: DELETED

ARTICLE 21: SUSPENSION

21.1 Suspension upon Operator Default

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

21.2 The Authority to act on behalf of Operator

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

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

21.3 Revocation of Suspension

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

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

21.4 DELETED

21.5 Termination

- 21.5.1 At any time during the period of Suspension under this Article 21, the Operator may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.
- 21.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 22.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Operator Event of Default.

ARTICLE 22: TERMINATION FOR DEFAULT

22.1 Operator Event of Default

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

- i. The Operator is in breach of its obligations under this Operation Agreement, which has a Material Adverse Effect upon the Authority or the Project;
- ii. The Operator fails to obtain accreditation from the concerned agency in accordance with MoT Guidelines as mentioned in the Annexure within 3 (three) months from the date of issue Completion Certificate or provisional certificate whichever is issued.
- iii. The Operator fails to timely renew such accreditation or the same is withdrawn at any time during the Operation Period.
- iv. The time prescribed for making payment of the Annual Fixed Fee shall be the essence of this Agreement. Non-Payment of the Annual Fixed Fee shall be accounted as Operator Event of Default and subsequently form a ground for termination of this Agreement.
- v. The Operator is in breach of any representation or warranty made under this Agreement or it repudiates this Operation Agreement.
- vi. The Operator fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Operation Agreement.
- vii. Change in Ownership has occurred in breach of the provisions of Article 8.2 of the Agreement.
- viii. The Operator abandons the Project or any of its material obligations as provided under this Agreement.
- ix. The check list items have not been completed within the period set forth in this Agreement.
- x. The Operator defaults on any of its obligations pertaining to compliance with Acts, Rules and Guidelines of Government of Himachal Pradesh or any other applicable laws, guidelines, rules, regulations, acts, etc.
- xi. The Operator has not furnished the Performance Security in accordance with Article 5.4 and the Operator fails to replenish or provide fresh Performance Security within a cure period of 30 (thirty) days.
- xii. The Operator does not comply with its Minimum Equity Requirements under Article 8.2.

- xiii. The Operator fails to undertake the Operation Obligations including compliance with the Maintenance Requirements as mentioned in this Agreement.
- xiv. The Operator fails to achieve Financial Close within the stipulated time period of 90 (ninety) days from the Effective Date, unless expressly extended by the Authority.
- xv. The Operator creates any Encumbrances, charges or lien in respect of Project / Project Site or any part thereof in favor of any Person, save and except as otherwise expressly permitted in this Operation Agreement.
- xvi. Any transfer pursuant to law of either (a) the rights and/or obligations of the Operator under this Operation Agreements and/ or (b) all or material part of the assets or undertaking of the Operator; except (i) to the extent permitted by this Operation Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Operator to perform its obligations under this Operation Agreement.
- xvii. A resolution is passed by the shareholders of the Operator for the voluntary winding up of the Operator.
- xviii. The Operator is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Operator or for any of its property that has a material bearing on the Project.
- xix. The Operator fails to comply with the provisions laid down in Article 8.1.
- xx. Any petition for winding up of the Operator is admitted by a court of competent jurisdiction or the Operator is ordered to be wound up by court, except if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Operator under this Agreement and Project Agreements, and provided that:
 - a The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement and Project Agreements;
 - b The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Operator as on the Compliance Date; and
 - c All the Project Agreements remain in full force and effect.
- xxi. The Operator assigns this Operation Agreement or any of its rights or obligations under the Operation Agreement, where such assignment is not in accordance with the terms and conditions of the Operation Agreement.
- xxii. The Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars.

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

make a representation and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of this Article 22.1.2.

22.2 Termination for Authority Event of Default

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

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

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

22.3 Termination Payment

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

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

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

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

22.3.3 Deleted

22.3.4 The Service Provider expressly agrees that Termination Payment under this Article 22 shall

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

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

22.4 Defect Liability

22.4.1 Liability for defects after Termination

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

The Operator shall return the Project Site and its assets as it is on competition of operation period.

ARTICLE 23: DIVESTMENT OF RIGHTS AND INTEREST

23.1 Divestment Requirements

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

- i. notify to the Authority forthwith the location and particulars of all Project Assets;
- ii. deliver forthwith the actual or constructive possession of the Project including Project Site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- iii. cure all Project Assets, including the approaches, pavements, structures, services and equipments of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Completion Period, all Project Assets shall be handed over on “as is where is” basis after bringing them to a safe condition;
- iv. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its operations etc., including all programmes and manuals pertaining thereto, as on the Transfer Date. For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation of the Project and shall be assigned to the Authority free of any Encumbrance;
- v. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- vi. on the Transfer Date the Declaration of License shall automatically terminate and the Operator, its subcontractors, agents, employees and licensees shall vacate the Project Facility and the leave the possession of the Project Assets;
- vii. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project and Project Site, including manufacturers’ warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- viii. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

23.2 Inspection and Cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the Effective Date of such Termination, the Authority shall verify, after giving due notice to the Operator specifying the time, date and venue of such verification and/or inspection, compliance by the Operator with the Maintenance Requirements. Defaults, if any, in the Maintenance Requirements shall be cured

by the Operator at its cost and the provisions of Article 22.6 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 23.

23.3 Cooperation and assistance on Transfer of Project

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

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

23.4 Vesting Certificate

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

23.5 Divestment costs etc.

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

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

ARTICLE 24: LIABILITY AND INDEMNITY

24.1 General indemnity

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

24.2 Liability of the Authority

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

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

24.3 Indemnity by the Operator

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

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

24.3.2 Without limiting the generality of the provisions of this Article 24, the Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator's Contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Operator is unable to secure such license within a reasonable time, the Operator shall, at its own expense, and without impairing the specifications and standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

24.4 Notice and contest of Claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 24 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

24.5 Defense of claims

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

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

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

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

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

24.6 No consequential claims

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

24.7 Survival on Termination

The provisions of this Article 24 shall survive Termination.

ARTICLE 25. DELETED

ARTICLE 26 INSURANCE

26.1 Insurance during Operation Period

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

26.2 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Operation Period or the Operation Period, as the case may be, the Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.3 Evidence of Insurance Cover

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

26.4 Remedy for failure to Insure

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

26.5 Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder

against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

26.6 Operator's waiver

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

26.7 Application of insurance proceeds

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

ARTICLE 27: FORCE MAJEURE

27.1 Force Majeure

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

27.2 Non-Political Event

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

- i. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- ii. strikes or boycotts (other than those involving the Operator, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24(twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year and not being an Indirect Political Event set forth in Article27.3;
- iii. any failure or delay of a Subcontractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Subcontractor;
- iv. any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;
- v. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- vi. any event or circumstances of a nature analogous to any of the foregoing.

27.3 Indirect Political Event

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

- i. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- ii. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- iii. any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- iv. any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Subcontractor;
- v. any Indirect Political Event that causes a Non-Political Event; or
- vi. any event or circumstances of a nature analogous to any of the foregoing.

27.4 Political Event

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

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

27.5 Duty to report Force Majeure Event

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

- i. the nature and extent of each Force Majeure Event which is the subject of any claim for

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

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

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

27.6 Effect of Force Majeure Event on the Operation

27.6.1 Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the period set forth in Article 19 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

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

27.7 Allocation of costs arising out of Force Majeure

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

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

- i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force

Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

- ii. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable
- iii. to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Operator, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Operator; and
- iv. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Operator.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Upgradation Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Operator's share of project revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

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

27.8 Termination Notice for Force Majeure Event

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

27.9 Termination Payment for Force Majeure Event

27.9.1 If the Termination is on account of Non Political Event, the Operator shall be entitled to receive from the Authority by way of Termination Payment a sum equal to lowest of the following (i) or (ii):

- i. 90% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Operator less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Operator; or
- ii. 90% of debt due less pending insurance claims.

27.9.2 If the Termination of this Operation is on account of an Indirect Political Event, the Operator

shall be entitled to receive from the Authority by the way of Termination Payment a sum equal to lowest of the following (i) or (ii):

- i. 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Operator less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Operator.; or
- ii. 100% of Debt Due less pending insurance claims.

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

27.10 Dispute Resolution

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

27.11 Excuse from performance of obligations

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

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

ARTICLE 28: DISPUTE RESOLUTION

28.1 Dispute Resolution

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

28.2 Adjudication

- 28.2.1 Any Dispute which is not resolved amicably, as provided in Article 28.1, shall be submitted for adjudication before “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd** ” as the sole Arbitrator, in accordance with the Applicable Laws and all reference to Dispute Resolution shall be construed accordingly. The proceeding shall be conducted as per the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.
- 28.2.2 The “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd** ” shall make a reasoned award (the “**Award**”). Any Award made by “**Director- Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd** ” pursuant to this Article 28 shall be final and binding on the Parties from the date it has been made. The Operator and the Authority agree and undertake to carry out all such acts in order to implement such Award without delay.
- 28.2.3 The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- 28.2.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.

28.3 Costs associated with Dispute Resolution

- 28.3.1 The cost incurred on adjudication including *inter alia* the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.

28.3.2 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 28.

28.4 Performance during Dispute

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

ARTICLE 29: DELETED

ARTICLE 30: MONITORING COMMITTEE

30.1 Appointment

30.1.1 Prior to the Effective Date, the Authority shall appoint a Monitoring Committee or a Nodal Officer. The Monitoring Committee shall consist of representatives of the following members:

- i. Two representatives of Authority,
- ii. Two representatives of Operator,
- iii. Any other member duly nominated by the Authority,

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

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

30.2 Powers and Duties

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

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

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

- 30.2.3 Without limitation to the generality of the foregoing Articles, the Monitoring Committee / Nodal Officer shall have the power to appoint an Independent Expert to undertake and determine the cost of repairs required as well as for the valuation of any other Works.
- 30.2.4 The Operator and the Authority shall extend full co-operation to the Monitoring Committee / Nodal Officer and to any Expert appointed by the Monitoring Committee / Nodal Officer. All the expenses of the Monitoring Committee shall be borne equally between the Parties. If the Authority appoints only Nodal Officer then the expenses shall be borne by the Authority.
- 30.2.5 The Monitoring Committee / Nodal Officer shall meet at least once every year of the calendar year at such time & venue as may be indicated by the convener and notified to all the members of the Monitoring Committee / Nodal Officer at least 14 (fourteen) days before the date of the meeting during the Operation Period.

ARTICLE 31: REDRESSAL OF PUBLIC GRIEVANCES

31.1 Complaints Register

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

31.2 Redressal of Complaints

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

ARTICLE 32: DISCLOSURE

32.1 Disclosure of Specified Documents

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

32.2 Disclosure of Documents relating to safety

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

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

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

ARTICLE 33: USER CHARGES/FEES

33.1 Levy and Appropriation of User Charges/Fees

- 33.1.1 On and from the COD, the Operator shall have the sole and exclusive right to demand, collect and appropriate Fee/User Charge as per the market driven rates for the facilities provided by the Operator in accordance with the provisions of this Agreement. The Operator shall carry the Operation of elevators / escalators. The Operator shall also be responsible for providing security services, housekeeping and horticulture services for the Operation of the Common Areas.
- 33.1.2 The Authority expressly recognizes that the right of the Operator or its Subcontractors to levy, demand, collect, retain, and to appropriate fee/charges in accordance (i) with the terms of this Operation Agreement; and (ii) to exercise all rights and remedies available under Applicable Law and under this Operation Agreement for the recovery of such User Charges/ Fee.

ARTICLE 34: TRANSFER OF THE PROJECT

DELETED

ARTICLE 35: CHANGE IN LAWS

35.1 Increase in Costs

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

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

35.2 Reduction in costs

If as a result of Change in Law, the Operator benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 5,00,000/- (Rupees Five Lakhs only) and 0.5% (zero point five percent) of the revenue being collected by the Operator in any Accounting Year, the Authority may so notify the Operator and propose amendments to this Agreement so as to place the Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 45 (forty five) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Operator to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Operator shall pay the amount specified therein to the Authority; provided that if the Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

35.3 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Operator any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 36: DISCLAIMER

36.1 Disclaimer

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

ARTICLE 37: MISCELLANEOUS PROVISIONS

37.1 Governing Law and Jurisdiction

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

37.2 Waiver

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

- i. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- ii. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- iii. Shall not affect the validity or enforceability of this Agreement in any manner. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

37.3 Exclusion of implied warranties

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

37.4 Severability

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

37.5 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.

37.6 Custody of Documents

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

37.7 Copyright

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

37.8 Use of the Authority's Documents

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

37.9 Compliance with Applicable Laws

37.9.1 The Operator shall, in all matters arising in the performance of this Operation Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Applicable Laws of any legally constituted public authority having jurisdiction over the Works. The Operator shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the plant and machinery and materials and required for completion of the Works. The Authority and the Operator shall comply with all the laws as applicable.

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

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

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

37.10 Joint and Several Liability

If the Operator is a consortium of two or more Persons, all such Persons shall be jointly and severally

liable to the Authority for the fulfillment of the terms of this Operation Agreement. Such Persons shall designate one of them to act as Lead Member with Authority to bind the consortium and each of its members. The composition or the constitution of the consortium shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Agreement.

37.11 Notifications

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

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

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

Name of Operator's Representative:

Address for communication:

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

37.12 Language

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

37.13 Counterparts

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

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

SIGNED SEALED AND DELIVERED For and on behalf of The Authority by: _____(Signature) _____(Name) _____(Designation)	SIGNED SEALED AND DELIVERED For and on behalf of The Operator by: _____(Signature) _____(Name) _____(Designation)
In the presence of 1. _____(Signature) _____(Name)	2. _____(Signature) _____(Name)
_____(Designation)	_____(Designation)

LIST OF SCHEDULES

Operation Agreement – Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode

Schedule I: - Project Site description

Schedule II: - Project facilities

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

Schedule IV: - Format of Performance Security

Schedule V: - List of Applicable Permits

Schedule VI: - Deleted

Schedule VII: - Deleted

Schedule VIII: - Deleted

Schedule IX: - Deleted

Schedule X: - Vesting Certificate

Schedule XI: - Deleted

Schedule XII: - Declaration of License

SCHEDULE-I: PROJECT SITE DESCRIPTION

1. Location

1. Jakhoo Temple:

Nestled amidst the vibrant beauty of the Shivalik hill ranges, Jakhoo Temple is an ancient Hanuman temple which offers a mystical vibe to the devotees of the "Pawan Putra". One of the famous sightseeing places in Shimla, it has the world's largest statue of God Hanuman, attracting holidaymakers of all ages apart from the Hindu community. Overlooking the nearby town of Sanjauli, the surroundings of the Jakhoo Temple are complemented by amazing views that make the setting even more spectacular. It is a great place to enjoy the awe inspiring sunrises and sunsets and an adventurous drive for trek enthusiasts. Other than that, the lush green winding pathways are an absolute treat for nature lovers.

It is situated at the highest point in Shimla, Jakhoo Temple is located on Jakhoo Hill. It stands at an elevation of about 2,455 meters (8,054 feet), making it the highest point in Shimla. The statue is one of the tallest in the world. There are approx. 200 steps from main entry gate to Hanuman Ji statue to avoid these steps an escalator purposed by RTDC.

2. Vikas Nagar:

Vikas Nagar is an upcoming neighborhood in Shimla, Himachal Pradesh. The place is scenic and offers rich natural views to its inhabitants and people who visit the area. The Shimla Bypass borders the locality and allows the dwellers to commute easily to adjoining places. The Shimla Old Railway Station is the major junction nearby and links the place with several areas of importance. Jaypee University of Information Technology, Bells Institute of Management & Technology, Bishop Cotton School etc are some of the reputed educational institutions positioned in and around the place. Presence of strong infrastructural facilities, popular medical centres and a cool climate throughout the year have all contributed towards qualifying Vikas Nagar as a favourite Real Estate hub.

3. Middle Bazaar:

Middle Bazaar connects lower bazaar to Mall Road. The easiest way to slip into Middle Bazaar is from the turn at Baljee's Restaurant on the main Mall Road. A flight of stairs leads you down to this market place that is best known for the New Plaza Restaurant and Malook Restaurant, both of which regale diners with hearty preparations of Indian delicacies in a boisterous ambiance. Middle Bazaar also has a number of general stores, chemists and street food stalls where regulars converge every evening to discuss politics, the environment, possibilities of rain showers and such matters of consequence. This is a great place to stroll through if you have had your fill with the touristy Mall Road and The Ridge.

Lower Bazaar lies down a slope off the main Mall Road and is where you should head to for a slice of the local life. This is where fruits and vegetables are bargained for with great fervour, where locals meet at street side cafes for some steaming tea, where the faithful make their way to the nearby Ram Mandir at dusk and where curious tourists venture in to pick up souvenirs at slightly lesser rates. This atmospheric bazaar which takes on a fairytale-like character after dark is truly one-of-a-kind and absolutely encapsulates the life of the adorable

natives of this City of Hills. It is close to the escalator service of middle bazaar.

2. Existing Facilities at the Project Site

S.No	Location	Escalator/ Elevator	Capacity	Load Capacity
1.	Jakhoo Temple	Escalator- 4	-	21.86 Kw / Escalator (4000 PPHPD)
2.	Vikas Nagar	Elevator – 3	20 Person/ Lift	25.90 kw/ lift (Motor Capacity)
3.	Middle Bazaar	Elevator – 1	20 Person/ Lift	11 Kw (Motor Capacity)

SCHEDULE-II: PROJECT FACILITIES

Project Facilities: The Operator shall operate the Project Facilities in accordance with the provisions of this Agreement as defined in Schedule III of this agreement.

The Operator shall undertake the Operation of Elevators and Escalators at the three sites i.e. Jakhoo Temple , Vikas Nagar & Middle Bazaar and shall also be responsible for collection of the user fees / tickets from commuters of the elevators and escalators over the Operation Period of 5(five) extendable further at the sole discretion of the Authority subject to the terms and conditions and provisions as stipulated in the Operation Agreement.

Project facilities include the following:

S.No	Location	Escalator/ Elevator	Capacity	Load Capacity
1.	Jakhoo Temple	Escalator- 4	100 people per minute	21.86 Kw / Escalator (4000 PPHPD)
2.	Vikas Nagar	Elevator – 3	20 people per trip	25.90 kw/ lift (Motor Capacity)
3.	Middle Bazaar	Elevator – 1	20 people per trip	11 Kw (Motor Capacity)

Operator shall be required to operate the elevators / escalators in conformity with the Guidelines of Ministry of Tourism, Government of India and Acts, Rules and Guidelines of Government of Himachal Pradesh. The Operator shall undertake completion of all spaces by deciding optimum utilization and quality as per Good Industry Practice to optimise operational efficiency and quality of the project.

SCHEDULE III

SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS

1. SCOPE OF WORK

1.1 Broad Scope of Work

The Scope of the Project (the “Scope of the Work”) shall include during the Operation Period, **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode** during the Operation Period of 05 (Five)years from the Effective Date / Appointed Date extendable further at the sole discretion of the Authority in accordance with the provisions of Article 3.3. Provided further that, the Operator is not in default of any of its obligations under the Agreement, is operating and maintaining the Project satisfactorily and in accordance with the provisions and obligations as stipulated in this Operation Agreement by undertaking the following activities and there are no Disputes/ claims pending for adjudication between the Parties in relation to the Project:

- I. The Operator shall undertake all the activities pertaining to and incidental to the **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode** including, but not limited to the following:
 - i. Taking over of the Project Site on “as is where is basis” and operate the facility. The same should be in sync with the concept presented to the Department during bidding process and subsequently finalised and approved after incorporating modifications, if any sought by RTDC and also as per terms of the RFP, Operation Agreement and Schedules thereof.
 - ii. Conform to and comply with the Acts, Rules and Guidelines of Government of Himachal Pradesh, as amended from time to time.

- II. Besides the above the Operator shall have the following operation and other Obligations as well:
 - i. The Operator shall be responsible for seeking all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, bar license, etc.
 - ii. The Operator shall at its own cost enter into Annual Maintenance Contracts (AMCs) with the Vendors for various installations.
 - iii. The Operator shall ensure that the Insurances are taken for Fire, STFI, Earthquake for the building, Third Party Liability, Medical Insurance and Workmen Compensation. During the operation phase also all relevant insurances as per statutory requirements or otherwise should be in place.
 - iv. The Operator shall maintain the entire premises in accordance with Good Industry Practice.
 - v. The Operator shall be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
 - vi. Meeting the requirements and norms laid down by the competent authorities regarding Operation of the Project Facilities, if any.
 - vii. Maintaining the standards of a Escalators / Escalators and providing facilities as per guidelines of Ministry of Tourism, Government of India, in terms of offerings, ambience and services as amended from time to time and avail and renew the certification from MoT in this regard.
 - viii. housekeeping services to be provided on daily basis or on demand.

- ix. Performance and fulfillment of all obligations of the Operator in accordance with the provisions of the Operation Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under the Operation Agreement.
- x. The Operator shall be responsible for payment of all taxes including GST as per GoI norms issued in this regard from time to time, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
- xi. Conform to and comply with the Acts, Rules and Guidelines of Department of Tourism and Civil Aviation, Government of Himachal Pradesh, as amended from time to time.

III. The Operator shall undertake the Operation of the elevators / escalators in accordance with the provisions of this Operation Agreement and the Schedules hereof.

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

V. The Operator shall be responsible for performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.

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

VII. The Operator shall ensure seamless operations of all the basic necessities like drinking water, DG sets, firefighting facility, and security on the Project Site.

1.2 Bye-Laws & Norms

- i. While undertaking operations of the Project, the Operator shall adhere to all the Applicable Laws relevant IS Codes and practices, statutory requirements the principles of Good Industry Practices and any other norms as applicable from time to time.
- ii. The Operator shall be responsible for all the Applicable Permits as may be required for the operations of the Project. The Project shall be ready for operation after taking all the clearance(s), within 15 days of the Compliance Date / Effective Date.

2. SPECIFICATIONS FOR DESIGN AND COMPLETION

2.1 MINIMUM BUILDING SPECIFICATIONS

Deleted

2.2 LIGHTING

- i. Lighting shall be designed to provide adequate vision, comfort and safety. It shall be designed to provide for uniform lighting throughout the facility with no dark patches or pockets.
- ii. Operator is expected to save energy and should use CFL or LED lamps in order to save energy.

3. PERFORMANCE SPECIFICATIONS FOR OPERATION, MAINTENANCE AND MANAGEMENT PHASE

The Operator shall be committed to operate elevators / escalators and shall implement systems to facilitate this objective.

3.1 OPERATION

- i. The Operator shall maintain the Project Facility in good and usable condition throughout the Operation Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- ii. The Operator shall adhere to the MoT Guidelines issued by GoI and modified from time to time.

3.2 EQUIPMENT MAINTENANCE

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

3.3 STAFFING AND PERSONNEL TRAINING

- i. Operator shall make provision of adequate staff required for operation and management of facility as prescribed in the staffing plan.
- ii. Operator shall ensure that all staff engaged in the operations is all times properly adequately notified, trained, and instructed and information records are maintained accordingly.
- iii. Operator shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears and wear identification badges at all times while working in the facility.
- iv. Operator should properly do verification of the staff hired.

3.4 SECURITY

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

3.5 PREPAREDNESS AND PREVENTION

- i. The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Project Site. Operator shall ensure that facility is operated in

a manner that minimizes the possibility of a fire, explosion, and theft. Operator shall provide and maintain requisite equipment including firefighting and adequate water supply, internal communication system and alarms and provisions for contacting local authorities.

- ii. Operator shall prepare and maintain emergency preparedness plan for facility and train all the personnel working in the facility in order to respond appropriately in such situation and carry out these plans in the event of an actual emergency.
- iii. Fire extinguisher, fire alarms and hydrants need to be maintained regularly by the Operator in the facility. Any damage to firefighting equipments installed in the facilities and in public spaces shall be rectified within 2 (two) days of detection. Fire extinguishers shall be replaced before the end of its expiry date.
- iv. In case of any emergency Operator should report and inform about the incident.
- v. Operator should remove visitors and provide them with a safe passage in case of any emergency.
- vi. Co-ordinate with the emergency services such as, trauma centers, hospitals, police stations, fire brigade office, etc.
- vii. Reorganize the operations with proper information, sufficient number or warning regulatory, information signs, displays or temporary change in visitor's circulation.
- viii. Attend to the affected area using manpower, machinery at Operator's disposal.
- ix. Clear the affected site and arrange for repairs and make a report of the incident to the Authority.
- x. The Operator shall evolve a comprehensive recovery plan for the restoration of the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:
 - a) Identify and prioritize essential facility functions for recovery.
 - b) Procedures for repairs / rebuilding / modifications, if any.
 - c) Contingencies for alternate data processing / protection of vital records.
 - d) Identify possible alternative traffic circulation / parking plans.
 - e) Documentation process for after action reports.

3.6 PERFORMANCE AND MAINTENANCE STANDARDS/INDICATORS FOR OPERATIONS

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

The performance levels define the level at which the Project is to be operated.

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

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

I. Performance Indicators and their permissible time limits

S. No.	Parameters	Performance Indicators	Permissible Time Limits For Rectifying Defects
1	Elevators	To remain operational from 08.00 Am to 10.00 Pm throughout the year	_____
2	Escalators	To remain operational from 08.00 Am to 10.00 Pm throughout the year	_____

II. Periodic Maintenance/ Renewal Activities

Deleted

III. Major Maintenance Work

Deleted

SCHEDULE-IV: FORMAT OF PERFORMANCE SECURITY

Bank Guarantee No.

Issuer of Bank Guarantee

(Name of Bank)

(Hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee

Details of the Bank of the Beneficiary

Bank: <>

Branch:<>

IFSC

Code:<>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Operation Agreement (hereinafter referred to as the “Operation”) to be executed amongst RTDC [Hereinafter referred to as the “Operating Authority”] and _____ (name of the Selected Bidder) [hereinafter referred to as the “Operator”] for the **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode** [hereinafter referred to as the “Project”], provided, however, such context of the Bank Guarantee or reference to the Operation in this Bank Guarantee shall be in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e. “Performance Security” shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Operator.

As per the terms of the Operation Agreement, the Operator is required to furnish to THE AUTHORITY, an unconditional and irrevocable bank guarantee for an amount of Rs _____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Operation Agreement for the Operation Period.

Operative part of the Bank Guarantee

1. At the request of the Operator, we _____ (name and address of the bank), hereinafter referred to as the (“Bank”), do hereby unconditionally and irrevocably affirm _____ and undertake that we are the guarantor and are responsible to the Authority i.e. the beneficiary

on behalf of the Bidder, upto a total sum of Rs _____ (Rupees _____ only), such sum being payable by us to the Authority immediately upon receipt of the first writtendemand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Operator and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Operator or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs ____ (Rupees _____ only).
3. We hereby waive the necessity of the Authority to demand the said amount from the Operator first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Operator, which are recoverable by the Authority by invocation of this Guarantee.
5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Operator. We undertake that to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _____ (Rupees _____ only) notwithstanding any dispute or disputes raised by the Operator or anyone else in any suit or proceedings before any dispute review arbitrator, court, tribunal or other Authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Operator shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till _____.
8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Shimla having address at _____.

Notwithstanding anytime contained herein:

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

SCHEDULE-V: LIST OF APPLICABLE PERMITS

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

S. No.	An indicative List	Agency (As applicable)
1.	Water Connection (if applicable)	Relevant Local Authority
2.	Application for PAN, sales tax and other tax registrations etc.	Concerned Departments of State Govt. and GoI
3.	Electricity Connection (if applicable)	State Electricity/Board/Corporation
4.	Clearance for employing labour-primary Employer	Labour Commissioner
5.	Employment Labour	Labour Commissioner
6.	Fire Safety Equipment Renewals	Fire Department
7.	Pollution Certificate	Pollution Department of GoHP
8.	License for hotel, other activities	Concerned Department of GoI and GoHP
9.	Working in Night Shifts	Police Department, Local Municipal Body/Municipal Corporation/Committee, etc.
10.	Permission to Commence Operations	Operating Authority
11.	Any other permits or clearance/No Objection Certificates required under Applicable Law	Concerned Competent Authority

SCHEDULE-VI: DELETED

SCHEDULE-VII: DELETED

SCHEDULE-VIII: DELETED

SCHEDULE-IX: DELETED

SCHEDULE-X: VESTING CERTIFICATE

- 1** **Ropeway & Rapid Transport System Development Corporation (RTDC) H.P. Ltd.**
 (“the Authority”) refers to the Operation Agreement dated..... (the
 “Agreement”) entered into with the(the **“Operator”**)
 for **Operation of elevators / escalators in Shimla on Public
 Private Partnership (PPP) Mode (the “Project”)**

- 2** The Authority hereby acknowledges compliance and fulfillment by the Operator of the
 Divestment Requirements set forth in Article 23.1 of the Agreement on the basis that upon
 issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title
 and interest of the Operator in or about the Project shall be deemed to have vested unto the
 Authority, free from any encumbrances, charges and liens whatsoever.

- 3** Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of
 this Vesting Certificate that nothing contained herein shall be construed or interpreted as
 waiving the obligation of the Operator to rectify and remedy any defect or deficiency in
 any of the Divestment Requirements and/or relieving the Operator in any manner of the
 same.

Signed this _____ day of _____, 20__ at

AGREED, ACCEPTED AND SIGNED
For and on behalf of

OPERATOR by:

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

SIGNED, SEALED AND DELIVERED
For and on behalf of Ropeway & Rapid
Transport System Development
Corporation (RTDC) H.P. Ltd

by:

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

In the presence of:

1.

2.

SCHEDULE-XI: DELETED

SCHEDULE-XII: DECLARATION OF LICENSE

(refer Article 6.1)

DECLARATION OF LICENSE

This is to declare that the License rights in terms of the Operation Agreement dated _____ in respect of all the land (alongwith the existing Project Assets, infrastructure, movable and immovable property thereon, if any, belonging to the Department of Tourism & Civil Aviation, Government of Himachal Pradesh) comprising the Project Site which is described, delineated and shown in Schedule I of the Operation Agreement dated _____ including the possession thereof are hereby granted by the Department of Tourism & Civil Aviation, Government of Himachal Pradesh (i.e. the Authority/ Licensor) in favour of M/s _____ (i.e. the Operator) for a period co-terminus with the term of the Operation Agreement, specifically for the purpose of **Operation of elevators / escalators in Shimla on Public Private Partnership (PPP) Mode** (the “Project”).

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

Dated :

Department of Tourism & Civil Aviation

ANNEXURE – I

ANNEXURE – III
Deleted

FORMAT FOR UNDERTAKING

(To be on official company
letterhead)

To,
The Deputy General Manager
Ropeways and Rapid Transport System Development Corporation H.P. Limited (RTDC),
US Club, Shimla – 171001

UNDERTAKING

I have read and understood all the terms and conditions mentioned in the Guidelines for Approval of Project and hereby agree to abide by them. The information and documents provided are correct and authentic to the best of my knowledge.

I understand that the approval of the Ministry of Tourism is no substitute for any statutory approval, and the approval given is liable to be withdrawn in case of any violation or misrepresentation of facts or non-compliance of directions that may be issued by the Ministry of Tourism, Government of India, without notice

In case of any dispute/ legal measure, the same may be eligible in the jurisdiction falling under the NCT of Delhi.

Place:

Date

:.....Signature

Name in block letters

Seal of the applicant

