

June 2018

BID DOCUMENT

**REQUEST FOR PROPOSAL (RFP) FOR  
SELECTION OF IT SOLUTION PROVIDER  
AGENCY FOR DEVELOPMENT OF WEB  
BASED APPLICATION FOR ONLINE  
BOOKING SYSTEM OF TOURIST LODGES,  
BUSES ,VESSELS AND PACKAGE TOURS,  
MAINTAINANCE AND MARKETING OF  
WEB PORTAL OF GMVN in Build Operate  
Transfer Mode**

**Garhwal Mandal Vikas Nigam (GMVN)**

**DISCLAIMER**

This Proposal Document is not an agreement and is not an offer or invitation by the Garhwal Mandal Vikas Nigam (GMVN), Government of Uttarakhand ("GoUK") to any party other than Applicants. The purpose of this Proposal Document is to provide the Applicant(s) with information to assist the formulation of their Proposal. This Proposal Document does not purport to contain all the information each Applicant may require. This Proposal Document may not be appropriate for all persons, and it is not possible for the GMVN, their employees or advisors to consider the

investment objectives, financial situation and particular needs of each party who reads or uses this Proposal Document. Each Applicant should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this Proposal Document and where necessary obtain independent advice from appropriate sources. The GMVN, their employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the Proposal Document.

The GMVN may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this Proposal Document.

The information contained in this Proposal Document or subsequently provided to Applicant(s), whether verbally or in documentary form by or on behalf of the GMVN, GoUK or any of their employees or advisors, is provided to the Applicant(s) on the terms and conditions set out in this Proposal Document and any other terms and conditions subject to which such information is provided.

## CONTENTS OF PROPOSAL DOCUMENT

Part I	Instructions to Applicants
Part II	Draft Concession Agreement (DCA)
Part III	Project Information Memorandum (PIM)

## PART I

### INSTRUCTIONS TO APPLICANTS

#### TABLE OF CONTENTS

NO.	CONTENTS	PAGE NO.
	Invitation for Proposals	1
	Schedule of Bidding Process	3
I	Introduction	4
II	Bidding Procedure	6
III	Criteria for Qualification	20
IV	Architectural Plan	23
V	Evaluation Methodology	24
	<b>Appendices</b>	
1	Covering letter for submitting Proposal	25
2	Details of the Applicant	26
3A	Format for Power of Attorney for signing of Proposal	27
3B	Format for Power of Attorney for Lead Member of Consortium	29
4	Format for anti-collusion certificate	31
5	Format for Project Undertaking	32
6	Format for Proposal Security	33
7	Format for Experience of the Applicant	35
7A	Format for Eligible Projects details	36
7B	Guidelines for providing information related to experience	37
8	Format for Financial Capability of the Applicant	38
9	Format for Financial Proposal	39

## NOTICE INVITING TENDER

### Development and Maintenance of Web Portal along with Call Centre for GMVN, Dehradun, Uttarakhand

Garhwal Mandal Vikas Nigam (GMVN) proposes to develop and maintain web portal along with Call Centre under Built Operate Transfer mode.

GMVN invites applications from interested parties, in terms of the Proposal Document in order to shortlist competent parties who could subsequently Proposal to **Built Operate Transfer (BOT)** the web portal and Call Centre, under a long term Concession Agreement for a maximum of 10 years (the "Project") following Uttarakhand Procurement Rules, 2017. The Project components include development of Web based IT solution with call centre, construction and maintenance and activities.

- A. The RFP document can be downloaded from [www.uktenders.gov.in](http://www.uktenders.gov.in); [www.gmvnl.in](http://www.gmvnl.in) and [uttarakhandtourism.gov.in](http://uttarakhandtourism.gov.in) free of cost.
- B. RFP should be submitted / uploaded on the website: [www.uktenders.gov.in](http://www.uktenders.gov.in) only. **Submission of Proposals through any other mode is not acceptable and shall not be considered.**
- C. GMVN, at its sole discretion, may extend the last date for Proposal submission Proposal submission by issuing an Addendum only on the website: [www.uktenders.gov.in](http://www.uktenders.gov.in).
- D. All subsequent, notification, changes and amendments would be posted only on the aforesaid website/s.
- E. Cost of RFP Document: Rs. 25,000/- in the form of crossed demand draft or Banker's cheque (non-refundable) favouring Managing Director, GMVN, payable at Dehradun.

#### Project Proponent and Address for Communication

**Managing Director**  
Garhwal Mandal Vikas Nigam (GMVN)  
74/1, Rajpur Road,  
Dehradun-248001

Sd/-

Managing Director, Garhwal Mandal Vikas Nigam

June 2018

## **SCHEDULE OF BIDDING PROCESS**

The Schedule of Bidding Process is as set out below:

1. Last Date for submission of Proposals - 25<sup>th</sup> June 2018 upto 11.00 AM
2. Last date for receiving queries - 14<sup>th</sup> June 2018 upto 2:00 PM
3. Pre-Proposal Meeting - 13<sup>th</sup> June 2018 upto 2:30 PM
4. Technical Proposal opening - 25<sup>th</sup> June 2018 upto 11:30 AM
5. Financial Proposal opening - To be intimated later

June 2018

**SCHEDULE OF BIDDING PROCESS**

GMVN would endeavour to adhere to the following schedule:

<b>S. No.</b>	<b>Event Description</b>	<b>Date</b>
1.	Last date for receiving queries	at 14 <sup>th</sup> June 2018 upto 2:00 PM
2.	<b>Pre-Proposal Meeting</b> <b>Venue :</b> GMVN 74/1, Rajpur Road, <b>Dehradun-248001</b>	at 13 <sup>th</sup> June 2018 upto 2:30 PM
3.	Last Date for the Submission of <b>Proposals</b>	at 25 <sup>th</sup> June 2018 upto 11.00 AM
4	<b>Technical Proposal opening</b> GMVN 74/1, Rajpur Road, <b>Dehradun-248001</b>	at 25 <sup>th</sup> June 2018 upto 11:30 AM
5	<b>Financial Proposal opening</b>	To be intimated later

June 2018

**SECTION I****INTRODUCTION****1.1 About Garhwal Mandal Vikas Nigam**

Government of Uttarakhand (GoUK) (“Authority”) through Garhwal Mandal Vikas Nigam (GMVN), a 100% owned State Government Company, incorporated under the Companies Act, 1956, owns and operates units/properties i.e. Tourist Bungalows, Hotels, Motels, Restaurants, Resorts etc. in the State of Uttarakhand. Some of the units are owned by GMVN and some units are owned by Uttarakhand Tourism Development Board, Government of Uttarakhand (hereinafter referred to as “UTDB”).

**1.2 Project Objective & Scope**

The objective of the Project is to develop a web based application for online room booking & management of lodges, buses, vessels and packages of GMVN. The selected Applicant shall design, develop and implement the solution and provide maintenance support for a period of at least 5 years in addition to providing training and ensuring the Office of the GMVN to take full operational control of the web portal for its information update and data management. Details of the functionality can be referred as mentioned in the section entitled ‘Terms of Reference’.

Concessionaire will also be responsible for marketing GMVN products through Social Media and other e-marketing techniques.

Concessionaire shall apart from above will also operate and manage a toll free, inbound 24 hours call-center supporting two languages, i.e. Hindi and English.

**1.3 Roles and Responsibilities**

The Concessionaire shall be responsible for the following:

- Nominate a senior person in the capacity of a Project Manager, who will serve as the single point of contact for the GMVN and shall attend all meetings related to the project. Plan and execute the project through a suitably qualified technical team.
- Finalize the detailed requirements and suggest any improvements to the processes as a result of computerization.
- Design, Develop, Test, implement the software solution consistent with declared software engineering practices.
- Develop Test Plan (including test case and expected results), carry out necessary acceptance tests including certifications (as may be applicable) and report the test results including satisfactory conformance to requirements.



June 2018

- Develop Technical Documents and User Manuals.
- Impart training to the end users and also develop Training materials.
- Develop Administration Manual along with Backup and Restore procedures. Provide IT operations support in conformity with the policies and guidelines of the State's IT infrastructure.
- Provide maintenance and support for a period of at least five (5) years after the Application goes live. Such maintenance support period shall commence from the date the system is fully rolled out.
- During the maintenance and support period, successful Applicant shall provide IT operations and administration of the installed solution, fix software defects, enhance the Web Portal software as per an agreed plan and provide such other technical support necessary for the smooth functioning of the overall solution covered under the scope of the project in conformity with the agreed performance criteria.
- The selected Applicant agrees to make good any defects and shortcomings in the software that is part of the agreed requirements.
- In the event of a major scope change involving significant time and effort over and above routine maintenance and support, the selected Applicant shall facilitate the assessment of impact to technical matters, timelines, cost and also justify the effort involved. Further, the Applicant agrees to implement these changes after approval of the competent authority.
- Conduct security audit of developed application by any CERT-in empanelled agency.
- Facilitate Audit and assessments, as and when required.
- At the end of Maintenance and Support period, the Applicant should help in smooth transition of the Project.

#### **1.4 Brief Description of Bidding Process**

- 1.4.1 GMVN intends to adopt a single stage 2 cover Bidding process for selection of the Successful Applicant.
- 1.4.2 The Proposals would be evaluated on the basis of the criteria set out in this Proposal Document. The Successful Applicant would then be required to enter into a Concession Agreement. Draft Concession Agreement is provided as Part II of this Proposal Document.

## SECTION II

### BIDDING PROCEDURE

#### A. GENERAL

##### 2.1 Eligible Applicants

2.1.1 The Applicants eligible for participating in the Bidding process shall be any one of the following two categories:

Category 1: A Single Business Entity

Category 2: A Consortium of Business Entities (hereinafter referred to as "Consortium").

The term Applicant used hereinafter would therefore apply to BOT the above-mentioned categories.

2.1.2 For the purpose of this Proposal, a Business Entity shall mean the following:

- (i) A registered partnership/proprietorship firm<sup>1</sup>
- (ii) A Company<sup>2</sup> registered in India under the provisions of the Companies Act, 1956 & 2013 or under the equivalent law in the case of a foreign Company.

2.1.3 The Applicant (if the Applicant is a Company or a registered Proprietorship Firm or a Partnership firm) should submit a Power of Attorney as per the format enclosed in Appendix 3A authorizing the signatory of the Proposal to commit the Applicant.

2.1.4 The Proposals submitted by a Consortium should comply with the following additional requirements:

- (a) number of members in a consortium should be limited to three (3);
- (b) the Proposal should contain the information required for each member of the Consortium;
- (c) the Proposal should include a description of the roles and responsibilities of the individual members;
- (d) a Applicant who has applied for a Project in its individual capacity or as part of a Consortium cannot participate as a member of any other Consortium applying for this Project;
- (e) the members of the Consortium shall execute a Power of Attorney as per the format enclosed in Appendix 3B;

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<sup>1</sup> a registered partnership/proprietorship firm should furnish income tax returns for the last three financial years or registration under the registrar of firms and the partnership deed in case of partnership firm executed between the partners.

<sup>2</sup> Company shall furnish a copy of certificate of incorporation and memorandum of association.

June 2018

- (f) members of the Consortium shall enter into a Memorandum of Understanding (MoU) on a non-judicial stamp paper of relevant value for the purpose of submitting its Proposal and execution of the Concession Agreement in the event being selected.

The MoU shall, inter alia:

- (i) Convey the intent of the Lead Member to enter into a long-term management agreement<sup>3</sup> with the Lead Technical Member and Lead Financial Member, for implementing the Project. The Lead Member would enter into the Concession Agreement on behalf of the consortium and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium.
- (ii) Clearly outline the proposed roles and responsibilities of each member of the Consortium.
- (iii) Include a statement to the effect that all the members of the Consortium shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Concession Agreement.
- (iv) Clearly refer to the Project name and scope for which the arrangement is made.

*A copy of the MoU should be submitted with the Proposal. The MoU entered into between the members of the Consortium should be specific to this Project and should contain the above requirements failing which the Proposal shall be considered non-responsive.*

- 2.1.5 Any entity which has been barred by GMVN, Government of Uttarakhand (GoUK), or any other state government in India (SG) or Government of India (Gol), or any of the agencies of GoUK/SG/Gol from participating in IT projects (BOT or otherwise) and the bar subsists as on the Proposal Due Date, would not be eligible to submit a Proposal, either individually or as member of a Consortium.

## **2.2 Change in Consortium composition**

- 2.2.1 Any change in composition of the Applicant after the Proposal Due Date would be at the sole discretion of GMVN and with prior written permission of GMVN.

- 2.2.2 Change in the composition of a Consortium may be permitted by GMVN, only where:

- (a) the modified Consortium would continue to meet the Criteria for Qualification for Applicants;
- (b) the proposed changes do not bring up the number of members above the maximum provided for in this Proposal Document.

<sup>3</sup> The management agreement shall have to be entered into for atleast 10 (Ten) years from the date of commencement of commercial operations.

June 2018

- (c) the new member expressly adopt the Proposal already made on behalf of the Consortium as if it were a party to it originally, and is not a party of any other Consortium / Applicant Bidding for this Project.

- 2.2.3 The modified Consortium would be required to submit a revised Memorandum of Understanding.

## **2.3 Number of Proposals**

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

## **2.4 Proposal Preparation Cost**

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

## **2.5 Project Inspection and Site Visit**

It is desirable that each Applicant submits its Proposals after visiting the website and ascertaining for themselves the location, real estate, environment or any other matter considered relevant by them.

## **2.6 Right to Accept any Proposal and to Reject any or all Proposals**

- 2.6.1 Notwithstanding anything contained in this Proposal Document, GMVN reserves the right to accept or reject any Proposal and to annul the Bidding process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment.

- 2.6.2 GMVN reserves the right to invite revised Proposals from the Applicants with or without amendment of the Proposal Document at any stage, without liability or any obligation for such invitation and without assigning any reason.

GMVN reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Applicant does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal, or
- (c) if in the opinion of GMVN, the preferred Applicant has failed to meet the expected returns from the Project.

June 2018

Such misrepresentation / improper response would lead to the disqualification of the Applicant. If the Applicant is a Consortium, then the entire Consortium would be disqualified / rejected. If such disqualification / rejection occurs after the Financial Proposals have been opened, then GMVN reserves the right to;

- (a) declare the Applicant quoting the next highest Concession Payment and where warranted, invite such Applicant to equal or better the Proposal of such disqualified Successful Applicant; or
- (b) take any such measure as may be deemed fit in the sole discretion of GMVN, including annulment of the Bidding process.
- (c) in such an eventuality the Proposal Security of the Applicant shall be forfeited.

## B. DOCUMENTS

### 2.7 Contents of Proposal Document

The Proposal Document comprises of the contents as listed below, and would additionally include any Addenda issued in accordance with Clause 2.9.

Part I	<p>Instructions to Applicants</p> <ol style="list-style-type: none"> <li>1. Introduction</li> <li>2. Bidding Procedure</li> <li>3. Criteria for Qualification</li> <li>4. Architectural Plan</li> <li>5. Evaluation Methodology</li> </ol> <p>Appendices</p> <ol style="list-style-type: none"> <li>1. Covering Letter</li> <li>2. Details of Applicant</li> <li>3A. Format for Power of Attorney for signing of Proposal</li> <li>3B. Format for Power of Attorney for Lead Member of Consortium</li> <li>4. Format for Anti-Collusion Certificate</li> <li>5. Format for Project Undertaking</li> <li>6. Format for Proposal Security</li> <li>7. Format for Experience of the Applicant</li> <li>7A. Format for Eligible Project Details</li> <li>7B. Guidelines for providing information related to experience</li> <li>8. Format for Financial Capability of the Applicant</li> <li>9. Format for Financial Proposal</li> </ol>
Part II	Draft Concession Agreement
Part III	Project Information Memorandum (PIM)

### 2.8 Clarifications sought by Applicant

June 2018

A prospective Applicant requiring any clarification on the Proposal document may notify GMVN in writing to the address as specified in Clause 2.16.5. The Applicants should send in their queries latest by the Last Date for Receiving Queries mentioned in the Schedule of Bidding Process. GMVN may, at its own discretion, forward its responses to all purchasers of the Proposal Document and would include a description of the enquiry without identifying its source.

## **2.9 Amendment of Proposal Document**

- 2.9.1 At any time prior to the Proposal Due Date, GMVN may, for any reason, whether at its own initiative or in response to clarifications requested by a Applicant, modify the Proposal Document by the issuance of Addenda. Such Addenda would also be posted on the websites of GMVN, UTDB & [www.uktenders.gov.in](http://www.uktenders.gov.in) and such addenda would form part of the Proposal Document.
- 2.9.2 Any Addendum thus issued will be sent in writing to only those Applicants who have purchased the Proposal Document.
- 2.9.3 In order to afford the Applicants reasonable time to take an Addendum into account, or for any other reason, GMVN may, at its own discretion, extend the Proposal Due Date. Intimation regarding such extension in the Proposal Due Date would only be posted on the website of the GMVN as specified in Clause 2.9.1 above.

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

### **2.10 Language**

The Proposal and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by the Applicant with the Proposal may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

### **2.11 Currency**

The currency for the purpose of the Proposal shall be in Indian Rupee (INR). The conversion to Indian Rupees shall be based on the closing exchange rate published by the Reserve Bank of India as on March 31, 2018 or the nearest prior date for which the RBI rate is available. In all such cases, the original figures in the relevant foreign currency and the INR equivalent thereof must be given. The exchange rate(s) applied shall be clearly stated. GMVN reserves the right to use any other suitable exchange rate for the purpose of uniformly evaluating all Applicants.

June 2018

## 2.12 Proposal Security

2.12.1 Proposals would need to be accompanied by a Proposal Security for Rs. 2 lakh (Rs. Two Lakh only). The Proposal Security shall be kept valid through the Proposal Validity Period and would be required to be extended if so required by GMVN.

The Proposal Security shall be in the form of either of the following:

- (a) a Demand Draft in favour of Managing Director, Garhwal Mandal Vikas Nigam (GMVN) payable at Dehradun or
- (b) a Banker's Cheque in favour of Managing Director, Garhwal Mandal Vikas Nigam (GMVN) payable at Dehradun

2.12.2 The Proposal Security shall be returned to the unsuccessful Applicants within a period of eight (8) weeks from the date of signing of Concession Agreement between GMVN and the Successful Applicant. The Proposal Security submitted by the Successful Applicant shall be released upon furnishing of the Performance Security in the form and manner stipulated in the Concession Agreement.

2.12.3 The Proposal Security shall be forfeited in the following cases:

- (a) if the Applicant withdraws its Proposal except as provided in Clause 2.21.1;
- (b) if the Applicant withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period;
- (c) if any information or document furnished by the Applicant turns out to be misleading or untrue in any material respect; and
- (d) if the successful Applicant fails to provide the Performance Security and to execute the Concession Agreement within the stipulated time or any extension thereof provided by GMVN.

## 2.13 Validity of Proposal

Proposals shall remain valid for a period not less than twenty four (24) weeks from the Proposal Due Date (Proposal Validity Period). GMVN reserves the right to reject any Proposal, which does not meet this requirement.

## 2.14 Extension of Validity of Proposal

In exceptional circumstances, prior to expiry of the original Proposal Validity Period, GMVN may request Applicants to extend the Proposal Validity Period for a specified additional period. Applicants not extending the Proposal Validity Period when so requested would automatically be disqualified without forfeiting their Proposal Security. A Applicant agreeing to the request will not be allowed to modify its Proposal, except as provided under Clause 2.21 but would be required to extend the validity of its Proposal

June 2018

Security for the period of extension and comply with Clause 2.12 of this document in all respects.

The Successful Applicant shall, where required by GMVN extend the validity of the Proposal till the date of signing of Concession Agreement.

## **2.15 Applicant's Responsibility**

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

2.15.2 It would be deemed that prior to the submission of Proposal, the Applicant has:

- (a) made a complete and careful examination of requirements, and other information set forth in this Proposal Document;
- (b) received all such relevant information as it has requested from GMVN; and
- (c) made a complete and careful examination of the various aspects of the Project including but not limited to:
  - (i) the Web Site;
  - (ii) existing infrastructure facilities;
  - (iii) all other matters that might affect the Applicant's performance under the terms of this Proposal Document.

2.15.3 GMVN shall not be liable for any mistake or error or neglect by the Applicant in respect of the above.

## **2.16 Pre-Proposal Meeting**

2.16.1 To clarify and discuss issues with respect to the Project and the Proposal Document, GMVN would hold a Pre-Proposal meeting as mentioned in the Schedule of Bidding Process.

2.16.2 Prior to the Pre-Proposal meeting, the Applicants may submit a list of queries and propose deviations, if any, to the Project and/or the Concession Agreement. Applicants must forward their queries latest by the Last Date of Receiving Queries mentioned in the Schedule of Bidding Process.

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

2.16.4 Attendance of the Applicants at the Pre-Proposal meeting is not mandatory.



June 2018

2.16.5 Deleted

2.16.6 No interpretation, revision, or other communication from GMVN regarding this solicitation is valid unless it is in writing and is signed by MD, GMVN. GMVN may choose to send to all Applicants, written copies of GMVN's responses, including a description of the enquiry but without identifying its source.

## 2.17 Format and Signing of Proposal

2.17.1 Applicants should provide all the information as per this Proposal Document and in the specified formats. GMVN reserves the right to reject any Proposal that is not in the specified formats.

2.17.2 The Proposal should be submitted in two parts:

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

- (i) Covering Letter for Submission of Proposals in the format provided as Appendix 1.
- (ii) Details of Applicant in the format provided as Appendix 2.
- (iii) Power of Attorney as per Appendix 3A, authorising the signatory of the Proposal to commit the Applicant
- (iv) Power of Attorney as per Appendix 3B, wherever required
- (v) Memorandum of Understanding (MoU), wherever required
- (vi) Anti-Collusion Certificate as per Appendix 4
- (vii) Project Undertaking as per Appendix 5
- (viii) Deleted
- (ix) Deleted
- (x) Qualification Information as per the format set out in Appendices 7, 7A, 7B & 8

**Part 2:** Financial Proposal as per the format set out in Appendix 9

2.17.3 Deleted

2.17.4 Deleted.

2.17.5 Deleted.

## 2.18 Submission of Proposals

The Applicants shall upload on Govt. of Uttarakhand e-procurement portal [www.uktenders.gov.in](http://www.uktenders.gov.in) only. No other mode of submission will be accepted and shall be summarily rejected.

The 'Technical Proposal' shall be uploaded in "Technical folder" of e-procurement portal [www.uktenders.gov.in](http://www.uktenders.gov.in) only

June 2018

The 'Financial Proposal' shall be uploaded in "Financial folder" of e-procurement portal [www.uktenders.gov.in](http://www.uktenders.gov.in) only

The rates quoted shall be firm throughout the period of performance of the assignment upto and including discharge of all obligations under the Agreement.

## **2.19 Proposal Due Date**

2.19.1 Proposals should be submitted before 25<sup>th</sup> June 2018, 11.00 AM on the Proposal Due Date as set out in the Schedule for Bidding Process, at the address provided in Clause 2.18.5 in the manner and form as detailed in this Proposal Document. Proposals submitted by either facsimile transmission or telex or e-mail will not be acceptable.

2.19.2 GMVN, at its sole discretion, may extend the Proposal Due Date by issuing an Addendum in accordance with Clause 2.9.

2.19.3 All the Proposals received shall be opened on the date as setout in the schedule of Bidding process. The Proposals shall be opened in front of the Applicant or its representative who choose to be present. The representative of the Applicant shall submit to GMVN an authorisation letter to attend the Proposal opening on the Proposal Due Date.

## **2.20 Late Proposals**

Late Proposals will not be accepted by the e-portal.

## **2.21 Modifications/ Substitution/ Withdrawal of Proposals**

2.21.1 The Applicant may modify, substitute or withdraw its Proposal after submission on e-portal before the Proposal Due Date. No Proposal shall be modified, substituted or withdrawn by the Applicant after the Proposal Due Date.

2.21.2 Deleted.

2.21.3 Withdrawal of a Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period would result in forfeiture of the Proposal Security in accordance with Clause 2.1 2.3 of this document.

## **D. EVALUATION OF PROPOSAL**

2.22 GMVN would open the Proposals on any working day within 45 days of the Proposal Due Date for the purpose of evaluation.

2.23 Proposals for which an acceptable notice of withdrawal has been submitted in accordance with Clause 2.21 shall not be opened.

2.24 GMVN reserves the right to reject any Proposal, if:

June 2018

- (a) at any time, a material misrepresentation is made or uncovered; or
- (b) the Applicant does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal.

## 2.25 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the short-listed Applicants shall not be disclosed to any person not officially concerned with the process. GMVN will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to treat the same in confidence. GMVN will not divulge any such information unless it is directed to do so by any authority that has the power under law to require its disclosure.

## 2.26 Tests of Responsiveness

2.26.1 Prior to evaluation of Proposals, GMVN will determine whether each Proposal is responsive to the requirements of the Proposal Document. A Proposal shall be considered responsive if:

- (a) it is received /deemed to be received by the Proposal Due Date including any extension thereof pursuant to Clause 2.19.
- (b) it is signed, sealed and marked as stipulated in Clause 2.17 and Clause 2.18.
- (c) it is accompanied by the power of attorney as specified in Clause 2.1.3.
- (d) it is accompanied by Proposal Security as specified in Clause 2.12.
- (e) it contains all the information and documents as requested in the Proposal Document.
- (f) it contains information in formats specified in this Proposal Document.
- (g) it mentions the validity period as set out in Clause 2.13.
- (h) it is accompanied by the MoU (for consortium), specific to this project, as stipulated in Clause 2.1.4(f).
- (i) it provides information in Reasonable Detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by GMVN without communication with the Applicant). GMVN reserves the right to determine whether the information has been provided in Reasonable Detail.
- (j) there are no inconsistencies between the Proposal and the supporting documents.

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

- (a) which affects in any substantial way, the scope, quality, or performance of the Project, or
- (b) which limits in any substantial way, inconsistent with the Proposal Document, GMVN's rights or the Applicant's obligations under the Concession Agreement, or

June 2018

- (c) which would affect unfairly the competitive position of other Applicants presenting substantially responsive Proposals.

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

## **2.27 Clarifications Sought by GMVN**

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

## **2.28 Proposal Evaluation**

2.28.1 To assist in the examination, evaluation, and comparison of Proposals, GMVN may utilise the services of consultant(s) or advisor(s).

2.28.2 The Proposals will be evaluated in 2 steps as detailed in the following Clauses 2.29 to 2.32 ("Proposal Evaluation").

## **2.29 Scrutiny of Key Submissions**

In Step 1 of Proposal Evaluation, the Key Submissions submitted by the Applicants shall be checked for responsiveness with the requirements of the Proposal Document and the evaluation of Qualification Information will also be undertaken at this step. Further, evaluation of Financial Proposal of a Applicant shall be taken up only after the contents of the Key Submissions and Qualification Information are found to meet the requirements of this Proposal Document.

## **2.30 Evaluation of Qualification Information**

In Step 1 of Proposal Evaluation, the Qualification Information of the Applicants shall be evaluated as per the Criteria for Qualification set out in Section III.

## **2.31 Evaluation of the Financial Proposal**

2.31.1 In Step 2, the Financial Proposals of all the Applicants who pass the Step 1 evaluation will be opened in the presence of the Applicants' representatives who choose to attend. The Applicants' representatives who choose to be present shall be required to sign and record their attendance.

2.31.2 The Applicant quoting the highest amount payable to GMVN by the Successful Applicant per annum ("Concession Payment") for the Project payable to GMVN by the Applicant, as

June 2018

per the format prescribed in Appendix 9, shall be declared as the Preferred Applicant for the Project.

2.31.3 In the event that two or more Applicants quote the same highest Concession Payment , GMVN may:

(a) invite fresh Proposals from the Applicants;

OR

(b) take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding process.

2.31.4 GMVN may either choose to accept the Financial Proposal of the Preferred Applicant or invite him for negotiations.

### **2.32 Submission of IT Plan/s**

2.32.1 Within 30 days of declaration of Preferred Applicant, the Preferred Applicant shall submit IT Plan/s as specified in Section IV.

2.32.2 GMVN may suggest changes to IT Plan/s and the Preferred Applicant would incorporate the same and submit the revised Architectural Plan/s.

2.32.3 In case the Preferred Applicant, does not want to incorporate the changes suggested by GMVN, GMVN would forfeit the Proposal Security of the Preferred Applicant and reserves the right to:

(a) either invite the next highest Applicant to match the Financial Proposal submitted by the highest Applicant;

OR

(b) take any such measure as may be deemed fit in the sole discretion of GMVN, including annulment of the Bidding process.

2.32.4 Upon acceptance of the IT Plan/s and Financial Proposal of the Preferred Applicant with or without negotiations, GMVN shall declare the Preferred Applicant as the Successful Applicant.

### **2.33 Notifications**

2.33.1 GMVN will notify the Successful Applicant by facsimile and by a letter (Letter of Acceptance) that its Proposal has been accepted.

### **2.34 Acknowledgement of Letter of Acceptance (LoA) and Execution of Concession Agreement**

June 2018

- 2.34.1 Within two (2) weeks from the date of issue of the LoA, the Preferred Applicant shall acknowledge the LoA and return the same to GMVN. The Successful Applicant shall execute the Concession Agreement within six (6) weeks (or any extension thereof provided by GMVN) of the issue of LoA.
- 2.34.2 GMVN will promptly notify other Applicants that their Proposals have been unsuccessful and their Proposal Security will be returned as promptly as possible and in any case not later than eight (8) weeks from the date of announcement of the Successful Applicant.

### **2.35 Performance Security**

- 2.35.1 The Successful Applicant shall furnish Performance Security by way of an irrevocable Bank Guarantee issued by a scheduled bank located in India in favour of GMVN, as required under the Concession Agreement.
- 2.35.2 Failure of the Successful Applicant to comply with the requirements of Clause 2.32.1 or 2.34.1 or 2.35.1 shall constitute sufficient grounds for the annulment of the LOA (where issued), and forfeiture of the Proposal Security. In such an event, GMVN reserves the right to
- (a) either invite the next highest Applicant for negotiations
  - OR
  - (b) take any such measure as may be deemed fit in the sole discretion of GMVN, including annulment of the Bidding process.

May 2011

## SECTION III

### CRITERIA FOR QUALIFICATION

#### 3.1 Evaluation Parameters

3.1.1 The Applicant's competence and capability is proposed to be established by the following parameters:

- a) Experience of Applicant
- b) Financial capability in terms of
  - (i) net worth
  - (ii) net cash accruals
  - (iii) annual income

3.1.2 On each of these parameters, the Applicant would be required to meet the evaluation criteria as detailed in this Section. Any Applicant meeting all the criteria will be qualified to submit its Proposal for the Project.

#### 3.2 Eligibility Criteria

##### 3.2.1 Technical Capacity for purpose of evaluation

3.2.1.1 The following categories of experience would qualify as Eligible Experience:

- Organizational Focus - The Company should have experience in software services such as design, development, operations and maintenance of software solutions with dedicated expertise in the technology area(s) that are proposed by the Applicants. Should be engaged in e-marketing of at least one government organization.
- Project Experience - The Company should have minimum three years' experience in software development involving web-based development services with at least one demonstrable projects each with value of not less than Rs.10 lacs, the work must have been done for a corporation of government undertaking. The company should have at least Three (3) government clients, Work in tourism related area would be an advantage.

Additionally the company must have developed similar software or application for MNC.

3.2.1.2 The Applicant should furnish the details of eligible experience as on the date of submission of Proposal Document.

3.2.1.3 The Applicants must provide the necessary information as per Appendix 7, 7A and 7B.

##### 3.2.2 Financial Capability

- 3.2.2.1 Financial Capability of the Applicants would be evaluated on the basis of the following :
- (a) net worth as at the end of the most recent financial year i.e 2016-17 (Ref. Appendix 8)
  - (b) average annual Turnover for the last three completed financial years i.e 2014-15, 2015-16, 2016-17 (Ref. Appendix 8).

The Applicants should provide information regarding the above based on audited annual accounts for the respective financial years. The financial year would be the same as the one normally followed by the Applicant for its Annual Report.

- 3.2.2.2 The Application must be accompanied by the audited annual financial statements of the Applicant (of all the members, in case of a Consortium) for the last three (3) financial years.

- 3.2.2.3 In case the annual accounts for the latest financial year are not audited and therefore the Applicant could not make it available, the Applicant shall give an undertaking to that effect and the statutory auditor shall certify the same. In such a case, the Applicant may provide the unaudited Annual Accounts (with Schedules) for the latest financial year. In any case, the Audited Annual Financial Statements for three years preceding the latest financial year would have to be provided, failing which the Application will be rejected as non-responsive.

### **3.3 Evaluation Criteria for Financial Capability**

- 3.3.1 For the purpose of Qualification, an Applicant would be required to demonstrate the Threshold Financial Capability measured on the criteria as listed below.

The Applicant would have to satisfy any one of the following two criteria:

- Net worth of the Applicant as at the end of the last financial year i.e 2016-17 shall be at least equal to Rs. 1 Crore;
- OR
- The average annual income/turnover of the Applicant for the last three financial years i.e 2014-15, 2015-16 & 2016-17 shall be at least equal to Rs. 2 Crore and shall additionally, satisfy atleast 50% of the above-mentioned networkth criteria

For the purposes of analysis only figures from the latest three audited annual financial statements would be considered.

### **3.4 Evaluation Criteria for a Consortium**

- 3.4.1 In case the Applicant is a Consortium, for the purpose of evaluation, the arithmetic sum of experience / financial parameters of all the members should meet the capability criteria as stipulated in this Section.
- 3.4.2 In case a joint venture company / companies is/are established for the purpose of implementing the Project, the Lead Member shall commit to hold a minimum



equity stake equal to 26% of such company / companies during the first ten years of the Concession Period.

## SECTION IV

### IT PLAN

#### 4.1 IT Plan

4.1.1 Preferred Applicant shall submit the IT Plan/s of the Project.

4.1.2 IT Plan/s shall consist of the following:

- (a) Overall concept plan
- (b) Implementation plan: The methodology should clearly demonstrate the compliance of the approach to be adopted by the Applicant for the implementation of the Project to the minimum specifications set out in the Draft Concession Agreement.
- (c) Timelines for development: The Applicant shall indicate the activity schedule.

## **SECTION V**

### **EVALUATION METHODOLOGY**

#### **5.1 Evaluation Parameters**

- 5.1.1 The Proposal for the Project would be evaluated on the basis of the lowest share of revenue from GMVN room booking quoted by the Applicants in the Financial Proposal.

#### **4.2 Evaluation of Financial Proposals**

- 4.2.1 The Applicant quoting the lowest share of revenue from GMVN room booking, by the Applicant for the Project, as per the format prescribed in Appendix 9, shall be declared as the Preferred Applicant for the Project.

- 4.2.2 In the event that two or more Applicants quote the same Concession Payment for the Project, GMVN may:

- (a) invite fresh Proposals from the Applicants;
- OR
- (b) take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding process.

- 4.2.3 GMVN may either choose to accept the Proposal of the Preferred Applicant or invite him for negotiations.

#### **4.3 IT Plan**

- 4.3.1 GMVN may suggest changes to the IT Plan/s and the Preferred Applicant shall submit the revised IT Plan/s incorporating the aforesaid changes.

- 4.3.2 In case the Preferred Applicant, does not want to incorporate the changes suggested by GMVN, GMVN may take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding process.

- 4.3.3 Upon acceptance of the IT Plan/s and Financial Proposal of the Preferred Applicant with or without negotiations, GMVN shall declare the Preferred Applicant as the Successful Applicant.

**COVERING LETTER FOR SUBMITTING PROPOSAL**

*[On the Letter Head of the Applicant (in case of Single Applicant) or Lead Member (in case of a Consortium)]*

Date:

To,  
Managing Director  
Garhwal Mandal Vikas Nigam Ltd.,  
74/1, Rajpur Road,  
Dehradun-248001.

**Re: Selection of IT solution provider agency for development of web based application for online booking system of tourist lodges, buses, vessels and package tours, maintenance and marketing of web portal of GMVN in Build Operate Transfer (BOT) mode**

Sir/Madam,

Being duly authorized to represent and act on behalf of \_\_\_\_\_ (hereinafter referred to as "the Applicant"), and having reviewed and fully understood all of the requirements set out in the Proposal Document and information provided therein, the undersigned hereby submits the Proposal for the Project referred above.

We are enclosing our Proposal including Key Submissions, Qualification Information and Financial Proposal in one original plus one copy, with the details as per the requirements of the Proposal Document, for your evaluation.

We confirm that our Proposal is valid for a period of time of twenty four (24) weeks from \_\_\_\_\_ (Proposal Due Date).

The undersigned hereby also declares that the statements made and the information provided in the Proposal is complete, true and correct in every detail.

Yours faithfully,

\_\_\_\_\_  
(Signature of Authorised Signatory)  
(Name, Title and Address of the Applicant)

**DETAILS OF APPLICANT**

1.
  - (a) Name
  - (b) Country of Incorporation
  - (c) Address of the registered office, corporate headquarters and its branch office(s), if any, in India
  - (d) Date of incorporation/registration and / or commencement of business
  
2. Brief description of the Company/firm including details of its main lines of business.
  
3. Details of individual(s) who will serve as the point of contact / communication with GMVN
  - (a) Name :
  - (b) Designation :
  - (c) Company/firm :
  - (d) Address :
  - (e) Telephone No :
  - (f) E-mail Address :
  - (g) Fax No :
  
4. Name, Designation, Address and Phone Nos. of Authorized Signatory of the Applicant:
  - (a) Name :
  - (b) Designation :
  - (c) Address :
  - (d) Telephone No .
  - (e) E-mail address :
  - (f) Fax No :
  
5. In case of Consortium :
  
- (a) The information above (1-4) should be provided for all the Members of the Consortium
- (b) Information regarding role of each Member should be provided as per table below

Sl. No.	Name of Member	Role of the Member*
1		
2		

\* Specify whether Lead Member/ Lead Technical Member/ Lead Financial Member

**FORMAT FOR POWER OF ATTORNEY FOR SIGNING PROPOSAL**

*(On a Stamp Paper of relevant value)*

**POWER OF ATTORNEY**

Know all men by these presents, we \_\_\_\_\_(name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms. \_\_\_\_\_ (name and address of residence) who is presently employed with us and holding the position of \_\_\_\_\_ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Proposal for the **Selection of IT solution provider agency for development of web based application for online booking system of tourist lodges, buses ,vessels and package tours, maintenance and marketing of web portal of GMVN in Build Operate Transfer (BOT) mode (the “Project”)** for which Proposal is invited by Garhwal Mandal Vikas Nigam Limited (hereinafter referred to as GMVN), including signing and submission of all documents and providing information/ responses to GMVN, representing us in all matters before GMVN, and generally dealing with GMVN in all matters in connection with our Proposal for the said Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Dated this the \_\_\_\_\_ Day of \_\_\_\_\_ 2018

For \_\_\_\_\_

(Name and designation of the person(s)  
signing on behalf of the Applicant)

(Signature)

(Name, Title and Address)

Accepted

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

(Name, Title and Address of the Attorney)

Date.

Notes:

- To be executed by the any of the partners in case of partnership firm / Lead Member (in case of a Consortium), as the case may be
- 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, where required, the executants(s) should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favour of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

- In case the Proposal is signed by an authorised Director/Representative, a certified copy of the appropriate resolution/ document conveying such authority may be enclosed in lieu of the Power of Attorney.
- In case the Proposal is executed outside India, the Applicant has to get necessary authorisation from the Consulate of India.

**FORMAT FOR POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM**

*(On a Stamp Paper of relevant value)*

**POWER OF ATTORNEY**

Whereas the Garhwal Mandal Vikas Nigam Ltd (GMVN) has invited Proposals from interested parties for Selection of IT solution provider agency for development of web based application for online booking system of tourist lodges, buses ,vessels and package tours, maintenance and marketing of web portal of GMVN in Build Operate Transfer (BOT) mode (the "Project").

Whereas, the members of the Consortium are interested in Bidding for the Project and implementing the Project in accordance with the terms and conditions of the Proposal Document and other connected documents in respect of the Project, and

Whereas, it is necessary under the Proposal Document for the members of the Consortium to designate 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 Proposal for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT:

We, M/s. \_\_\_\_\_, M/s. \_\_\_\_\_, and M/s. \_\_\_\_\_ (the respective names and addresses of the registered office) do hereby designate M/s. \_\_\_\_\_ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's Proposal for the Project, including submission of Proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with GMVN , any other Government agency or any person, in connection with the Project until culmination of the process of Bidding and thereafter till the Concession Agreement is entered into with GMVN.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this the \_\_\_\_\_ day of 2018

(Executants)

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

Note:

- 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.

- In case the Proposal is executed outside India, the Applicant has to get necessary authorisation from the Consulate of India.

**FORMAT FOR ANTI-COLLUSION CERTIFICATE**

**Anti-Collusion Certificate**

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

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

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2018

Name of the Applicant

\_\_\_\_\_  
Signature of the Authorised Person

\_\_\_\_\_  
Name of the Authorised Person

Note:

- To be executed by all the Members in case of Consortium.
- To be executed by all the partners in case of partnership firm

**FORMAT FOR PROJECT UNDERTAKING**

*[On the Letter head of the Applicant (in case of Single Applicant) or  
Lead Member (in case of a consortium)]*

To,  
Managing Director  
Garhwal Mandal Vikas Nigam Ltd.,  
74/1, Rajpur Road,  
Dehradun-248001.

**Re: Selection of IT solution provider agency for development of web based application for online booking system of tourist lodges, buses , vessels and package tours, maintenance and marketing of web portal of GMVN in build operate transfer mode**

We have read and understood the Proposal Document in respect of the captioned project provided to us by GMVN.

We hereby agree and undertake as under:

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

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2018.

Name of the Applicant

\_\_\_\_\_  
Signature of the Authorised Person

\_\_\_\_\_  
Name of the Authorised Person

Note:

- To be signed by the Lead Member in case of a Consortium.
- To be signed by one of the partner in case of partnership firm

**FORMAT FOR PROPOSAL SECURITY**

*(To be issued by a Scheduled Bank having a branch in Dehradun, India)*

B.G. No. \_\_\_\_\_ dated \_\_\_\_\_.

This Deed of Guarantee executed at \_\_\_\_\_ by \_\_\_\_\_ (Name of Bank) having its Head/Registered office at \_\_\_\_\_ (hereinafter referred to as “the Guarantor”) which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

**In favour of**

\_\_\_\_\_, Garhwal Mandal Vikas Nigam Limited (hereinafter called “GMVN”), having its office at \_\_\_\_\_,

\_\_\_\_\_ which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

**WHEREAS**

A. M/s. \_\_\_\_\_ Ltd<sup>4</sup>, a Company incorporated under provisions of the Companies Act, 1956/registered partnership/proprietorship firms having its registered office at \_\_\_\_\_ (hereinafter called “the Applicant”) which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns, has/have Proposal for Redevelopment of IT Web based solution with Call Centre at Dehradun (hereinafter referred to as “the Project”).

B. In terms of Clause 2.12 of the Proposal Document dated \_\_\_\_\_ issued in respect of the Project (hereinafter referred to as “Proposal Document”) the Applicant is required to furnish to GMVN an unconditional and irrevocable Bank Guarantee for an amount of Rs \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) as Proposal Security.

C. The Guarantor has at the request of the Applicant and for valid consideration agreed to provide such Bank Guarantee being these presents:

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

(a) The Guarantor, as primary obligor shall, without demur, pay to GMVN an amount not exceeding Rs \_\_\_\_\_/- (Rupees \_\_\_\_\_ only), within 5 days of receipt of a written demand from GMVN calling upon the Guarantor to pay the said amount and stating that the

<sup>4</sup> Insert name of the Successful Proposalder (a company/partnership/proprietorship firm) as the case may be. In case of Consortium, name of the Lead Member shall be inserted.

Proposal Security provided by the Applicant has been forfeited in terms of Clause 2.12.3 of the Proposal Document.

- (b) Any such demand made on the Guarantor by GMVN shall be conclusive and absolute as regards the forfeiture of Proposal Security and the amount due and payable by the Guarantor under this Guarantee.
- (c) The above payment shall be made without any reference to the Applicant or any other person and irrespective of whether the claim of GMVN is disputed by the Applicant or not.
- (d) This Guarantee shall be irrevocable and remain in full force for a period<sup>5</sup> of \_\_\_\_\_ months from (date<sup>6</sup>) \_\_\_\_\_ or for such extended period as may be mutually agreed between GMVN and the Applicant and shall continue to be enforceable till all amounts under this Guarantee are paid.
- (e) The Guarantee shall not be affected by any change in the constitution or winding up of the Applicant/the Guarantor or any absorption, merger or amalgamation of the Applicant/the Guarantor with any other person.
- (f) In order to give full effect to this Guarantee, GMVN shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Proposal Document or other documents or by extension of time of performance of any obligations granted to the Applicant or postponement/non exercise/delayed exercise of any of its rights by GMVN against the Applicant or any indulgence shown by GMVN to the Applicant and the Guarantor shall not be relieved from its obligations under this Bank Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise or omission on the part of GMVN or any indulgence by GMVN to the Applicant to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving the Guarantor.
- (g) The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

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

Signed and Delivered by \_\_\_\_\_  
Bank by the hand of Mr/Ms \_\_\_\_\_  
its \_\_\_\_\_ and authorised official.

<sup>5</sup> Duration of the Proposal Validity Period as per clause 2.13

<sup>6</sup> Proposal Due Date

**APPENDIX 7**

**GUIDELINES FOR PROVIDING INFORMATION RELATED TO EXPERIENCE**

*It may be noted that in the absence of any detail from the certificates specified in the following paragraphs, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score*

Using the format below, provide information on each reference assignment along with a client certificate or suitable supporting documentation.

<b>Name of Project</b>	
Location where services were delivered	
Name of the Client:	
Name and address of Client Contact Officer	
Duration (dates) of assignment:	
Status of assignment: Completed I Ongoing (if it is on-going, level of completion)	
Approx. Value of engagement	
Brief description of engagement and services provided by your company	
Similarity of products and/or services (if any) with this tender requirements	

**APPENDIX 8**

**FORMAT FOR FINANCIAL CAPABILITY # OF THE APPLICANT**

(Equivalent in Rs. Crore)

Applicant*	Net Worth	Annual Income			
	Year 1 (As on -----)	Year 1 (From ---- to ----)	Year 2 (From ---- to ----)	Year 3 (From -- -- to ---- )	Average
Sole Applicant					
Lead Member of Consortium					
Other Member 1 (in case of Consortium)					
Other Member 2 (in case of Consortium)					
Total					

# The Applicant should provide the Financial Capability based on its own financial statements. Financial capability of the Applicant's parent company or its subsidiary or any associate company (who are not members of the Consortium) will not be considered for computation of the Financial Capability of the Applicant.

\* Any Applicant being a Type 1 Applicant should fill in details as per the row titled Sole Applicant and ignore the rows below. In case of a Consortium, ignore the first row and provide relevant details in subsequent rows.

**General Instructions:**

1. Net Worth
  - For Company = (Subscribed and Paid-up Capital fund + Reserves) - (Revaluation reserves + Miscellaneous expenditure not written off)
  - For Partnership Firm = Aggregate of partners' capital account + Reserves - Aggregate of drawings by partners - Aggregate of advances to partners - (Revaluation reserves + Miscellaneous expenditure not written off)
  - For Proprietorship Firm = Aggregate of Proprietor' capital account + Reserves - Aggregate of drawings by proprietor - Aggregate of advances to proprietor - (Revaluation reserves + Miscellaneous expenditure not written off)
2. Annual Income = Total revenues net of indirect taxes as indicated in the annual financial statement
3. The financial year would be the same as followed by the Applicant for its annual report. Year 1 will be the latest completed financial year for which the audited balance sheet is available. Year 2 shall be the year immediately preceding Year 1. Year 3 shall be the year immediately preceding Year 2.
4. The Applicant shall provide the audited annual financial statements as required for this PROPOSAL Document. Failure to do so would be considered as a non-responsive Proposal.

5. The Applicant should clearly indicate the calculations and references in the financial statements in arriving at the above numbers in an attached worksheet.



**FORMAT FOR FINANCIAL PROPOSAL**

This Annexure to be filled in and uploaded in the Financial Folder.

**VOLUME II - DRAFT CONCESSION AGREEMENT**

**BETWEEN**

Garhwal Mandal Vikas Nigam Limited (GMVN)  
["CONCESSIONAIRE" OR "CONCESSIONING AUTHORITY"]

**AND**

**(Name of the Concessionaire)**  
["CONCESSIONAIRE"]

June 2018

**TABLE OF CONTENTS**

<b>ARTICLE</b>	<b>CONTENTS</b>
1	Definitions & Interpretations
2	The Concession
3	Obligations of Concessionaire
4	Obligations of Concessions Authority
5	Project Engineer
6	Force Majeure
7	Events of Default and Termination
8	Dispute Resolution
9	Financing and Lender's Rights
10	Representations, Warranties and Disclaimer
11	Miscellaneous

**SCHEDULE**

1	Minimum Technical Requirement
1(B)	Details of Existing and Proposed Infrastructure of GMVN
2	Payment Schedule
3	Performance Requirement
4	Performance Security
5	Scope of Project Engineer

June 2018

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

BETWEEN

Garhwal Mandal Vikas Nigam Ltd., (Concessing Authority) its registered office at 74/1, Rajpur Road, Dehradun-248001 (hereinafter referred to as "**Concessing Authority**" or "**CONCESSIONAIRE**", which expression shall, unless the context otherwise requires, includes its administrators, successors and assigns) of the **ONE PART**;

**AND**

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

**WHEREAS,**

- A. Concessing Authority had decided to select the Successful Bidder through a competitive bidding process for Build Operate Transfer of web based application for online booking system of tourist lodges, buses ,vessels and package tours, maintainance and marketing of web portal of GMVN on Public Private Partnership (PPP) basis (the "**Project**"), which shall be given by Concessing Authority to the Concessionaire.
- B. With an objective to seek private sector participation in the development of the aforesaid Project, Concessing Authority had invited competitive Proposals/ Bids from interested parties to partner Concessing Authority inter alia, to subsequently operation and maintenance of existing infrastructure and proposed development including design, engineer,

June 2018

- finance, develop, market and manage the same on the terms and conditions contained in the Request for Proposal (RFP) document;
- C. In response to the Request for Proposal document, the Concessioneing Authority received Proposals from various Bidders;
- D. Concessioneing Authority evaluated the Financial Proposals submitted by all Bidders who met the Technical Qualification Criterion specified in the RFP document and accepted the Proposal/Bid submitted by the **"Successful Bidder"** consisting of M/s \_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_ (collectively the **"Consortium"**) with \_\_\_\_\_ as its Lead Member or M/s \_\_\_\_\_ (Single/ Individual Bidder) and a Notice of Award, bearing No. \_\_\_\_\_ Dated \_\_\_\_\_ was issued to the Successful Bidder.
- E. Concessioneing Authority acknowledges that as on this day, the Concessionaire has submitted an unconditional and irrevocable revolving Bank Guarantee for a value of Rs ..... **Lakhs** (Rupees .....only) as Performance Security for the Concession Period of **5 years**, as per the conditions specified in Article 3.2
- F. In pursuance to the above, Concessioneing Authority is executing this Agreement to grant the Concession to the Concessionaire to operation and maintenance of existing IT infrastructure and proposed development including design, engineer, finance, develop, market and manage the above mentioned Project and its allied facilities, in accordance with terms, conditions and covenants hereinafter set forth.

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

June 2018

**ARTICLE 1**  
**DEFINITIONS & INTERPRETATIONS**

**1.1 Definitions**

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

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

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

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

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

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

June 2018

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

**“Applicable Permits”** means all clearances, permits, authorisations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or maintained under or pursuant to Applicable Laws, in connection with implementation of the Project during the subsistence of this Agreement.

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

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

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

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

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

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

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

June 2018

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

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

"**Consortium**" means the consortium consisting of (i) XXXX, (ii) YYYY, and (iii) ZZZZ formed, to implement the Project

"**Competent Authority**" means the concerned department, Government Instrumentality or authority of the Concessioneing Authority duly empowered and authorized to grant necessary sanctions and approvals.

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

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

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

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

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

- a) The principal amount of the debt provided by the Senior Lender under the Financing Documents for financing the Project, which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for



June 2018

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

**“Development Period”** means the period from the Compliance Date till the achievement of Project Milestone and the issuance of Project Milestone Completion Certificate, in accordance with the Project Milestone set forth in Article 2.8.

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

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

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

**“Expert”** shall have the meaning ascribed to it in Article 5 and Schedule 8.

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

June 2018

**“Financial Closure”** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case not be later than 180 days from the Appointed Date as applicable hereof..

**“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 immediately following 31st March. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.

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

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

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

June 2018

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

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

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

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

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

“**CONCESSIONAIRE**” means Garhwal Mandal Vikas Nigam Limited.

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

June 2018

**“Operation and Maintenance Phase”** is the period commencing after the execution of Concession Agreement Completion Date (as per Project Milestone in Article 2.8) and terminating at the Transfer Date.

**“O&M Manual”** shall have the meaning ascribed to it in Article 3.5 (b)

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

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

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

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

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

**“Project”** means subject to the provisions of this Concession Agreement, the operation and maintenance of existing infrastructure and proposed development including design, engineer, finance, construct, market and manage, transfer of the Project Facility, as envisaged, to the Concessioneing Authority at the end of the Concession Period or on prior termination of the Concession Agreement on Concessionaire/ Concessioneing Authority Event of Default or otherwise..The Project shall also include all equipments, equipments installed therein to be used for the purposes of the Project and including but not limited to the furniture, fixtures and equipments, other related facilities installed or affixed and all additions,

June 2018

modifications, alterations and extensions thereto as may be effected by the Concessionaire from time to time, as per the approved and sanctioned plans on the Web Site.

**“Project Agreements”** means collectively, this Concession Agreement, the Financing Documents, Development Agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time and any other agreements or contract that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project.

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

**“Project Development Completion Date”** means a date of the completion of the Development Period, which shall be at the expiry of a period of 6 (Six) months from the Compliance Date or such other date (with the consent of Concessioneing Authority) by which the overall development and operationalisation of the Project is completed in accordance with the provisions of this Agreement and when the Project Milestone Completion Certificate is issued by Concessioneing Authority as per Article 2.8.

**“Project Engineer”** shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with Article 4 for supervision and monitoring of compliance by the Concessionaire with the Development Requirements and O&M Requirements and to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule 5.

**“Project Facility”** means the Website, servers, Call Centre as per the specifications given under Schedule 3.

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

June 2018

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

**“Project Site”** means the space GMVN will provide to Concessionaire for setting up of Call Centre, Server Room and other IT equipments required for this Project.

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

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

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

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

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

June 2018

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

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

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

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

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

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

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

June 2018

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

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

**“Users”** means all the persons who use all or any one or more of the facilities, website, utilities etc. established or provided in the Project under suitable arrangement entered into by such persons with the Concessionaire / Concessionaire’s sub-lessees on terms and conditions as stipulated from time to time by the Concessionaire’s sub-lessees in this regard.

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

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in Dehradun forming part of the Union of India;



June 2018

- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations or partnerships, organisations or other entities (whether or not having a separate legal entity);
- d. terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e. the headings are for convenience of reference only and shall not be used in, and shall not affect, the Development or interpretation of this Agreement;
- f. the words "include" and "including" are to be construed without limitation;
- g. references to "Development" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the Development;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to day shall mean a reference to a calendar day;
- j. any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- k. reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;

June 2018

- l. the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- n. references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- o. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- p. unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

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

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

June 2018

#### 1.4 Ambiguities and Discrepancies

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

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

#### 1.5 Priority of Documents

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

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

June 2018

## ARTICLE 2 THE CONCESSION

### 2.1 Grant of rights to Concessionaire

- a. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and Applicable Permits, the Concessions Authority hereby authorises the Concessionaire to invest, finance, design, engineer, construct, equip, commission, operate, market, maintain and manage the Project during the Term of this Agreement.
- b. For the purpose of implementing the Project, Concessions Authority inter alia grants to the Concessionaire all the rights, powers, benefits, privileges, authorisations and entitlements, to utilise the Website and Project Site for the purposes of the Project, and to further undertake the development, Development and improvement therein or thereon, as may be necessary or appropriate to manage the Project in accordance with the provisions of this Agreement.
- c. Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into agreements with such Persons, as it may deem necessary and appropriate, for performing its obligations under this Agreement.
- d. The Concessionaire may create an Encumbrance, with respect to its rights, in favour of Senior Lenders, only during the Lease Period strictly as per the provisions of Article 10 and 11.1(c), in part or whole, in accordance with the terms of this Agreement.  
Provided that the Concessionaire shall provide written intimation to the Concessions Authority alongwith relevant records of the encumbrance(s) created, which shall be in strict compliance with the provisions of Article 11.1 (c).

June 2018

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

## 2.2 Acceptance by Concessionaire

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

## 2.3 Transfer of Project Site

Within 60 (Sixty) days from the Appointed Date, Concessioneing Authority shall hand over an Office Space in GMVN Headquarter for setting up Call Centre. The infrastructure already developed by Concessioneing Authority as per detail layout plan and peaceful physical possession of the Project Site and existing structures to Concessionaire on 'as-is-where-is' basis, free from all Encumbrances.

## 2.4 Conditions Precedent

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

The Concessioneing Authority shall have:

June 2018

- i. Give comments/ observations (if any) to the concept plan submitted by the Concessionaire under Article 2.4(c)(i), within a time period of 30 (Thirty) days from the date of its receipt. Failure to do so will be considered deemed approval of the concept plan by the Concessioneing Authority.
- ii. Give approval to the amended concept plan within 30 (Thirty) days from the date of its receipt.
- iii. Concessioneing Authority shall pay annual fee to the Concessionaire as per this Agreement.

c. **Conditions Precedent for the Concessionaire**

The Concessionaire shall have:-

- i. Prepared a concept plan for the Project and preliminary project cost estimates, including the area statement, details of services to be so provided and as incorporated in the concept plan as per the applicable Local Byelaws, Norms, etc and submit to the Concessioneing Authority for its approval, whereby meeting all the requirements mentioned herein, apart from all other requirements of this Concession Agreement in the concept plan within a period of 30 days from the Appointed Date.
- ii. Incorporated the necessary suggestions / amendments proposed by the Concessioneing Authority in its concept plan, within a period of 10 (ten) days from the date of receipt of such suggestions from the Concessioneing Authority and submit again for approval.
- iii. Provided the Concessioneing Authority copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Concession Agreement by the Concessionaire.

June 2018

- iv. Delivered to the Concessioneing Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.
- v. Executed and procured execution of the Substitution Agreement.
- vi. Executed the Financing Agreements and delivered to the Concessioneing Authority, 3 (three) true copies thereof, duly attested by a Director of the Concessionaire.

#### 2.4.1 Obligations to Satisfy Conditions Precedent

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

June 2018

**2.4.2 Non-fulfillment of Conditions Precedent**

- i. In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 90 (Ninety) days of the signing of this Agreement and also, the Concessions Authority has not 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 Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- ii. In the event that the Concessionaire has fulfilled its Conditions Precedent and Concessions Authority has not procured fulfillment of any or all of the Conditions Precedent set forth in Article 2.4 (b) within the period specified in respect thereof, the Concessions Authority shall pay to the Concessionaire damages equivalent to an amount calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day's delay until the fulfillment of the Condition Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security. In the event when the maximum damages as above has become payable and the Concessions Authority has still not been able to procure fulfillment of any or all the Conditions Precedent set forth in Article 2.4 (b) and the period for achievement of the same has not been mutually extended then the Concessions Authority shall be liable to return the Concessionaire the Performance Security. In the event the Concessions Authority has terminated this Agreement under Article 2.4.2 (i) due to non-fulfillment of Conditions Precedent by the Concessionaire, the Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees and the



June 2018

Concessioning Authority shall forfeit the Performance Security of the Concessionaire

- iii. In the event that Vacant Possession of the Project Site has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Concessioning Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.
- iv. Instead of terminating this Agreement as provided in paragraph (a) above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

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

- i. Pursuant to Article 2.3, the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such investigations and development activities and any other activity as may be necessary or appropriate to implement the Project. However, it is being clarified here that in the event of Termination of this Agreement due to non-fulfilment of Conditions Precedent, Concessioning Authority shall have no liability to make any payment for the activities undertaken by the Concessionaire in the Project Site.
- ii. Same and except as expressly provided under this Agreement, the Concessionaire shall not mortgage, transfer, assign or otherwise Encumber the Project Site throughout the Concession Period.
- iii. Subject to the terms of this Agreement, the Concessionaire shall have the right to develop, create, obtain, set up, construct as the context

June 2018

admits or requires, and operate and maintain the Project by itself or through its Contractors.

- iv. The Concessionaire shall have the right to use the Project Site in accordance with the provisions of this Agreement and for this purpose the Concessionaire may regulate the entry and use of the Project Site by the Third Parties.
- v. The Concessionaire shall not without the prior written approval of Concessioning Authority use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

## 2.6 Peaceful Possession

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

## 2.7 "Concession Period" or "Term" of Concession Agreement

- a. This Agreement shall be valid and binding on the Parties throughout the period commencing from the Compliance Date till the end of 5 (Five) years and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions of this Agreement. After completion of 5 years of concession period, 2 years concession period can be extended based on performance of the concessionary. For the extended period, all the terms and conditions related to concession agreement will remain same.  
Provided that in the event of early Termination, the period of Agreement shall be limited to the period commencing from the Compliance Date and ending with the Termination Date.
- b. Upon expiry of the Concession Period as per Article 2.7, the Concessionaire shall peacefully surrender and yield the Project Site and the Project Facility along with

June 2018

Transfer Assets to the Concessioneing Authority in accordance with the provisions of Article 7.6 (Handback of Transfer Assets).

## 2.8 Project Milestone

1. The **“Project Milestone” for development of Website along with Call Centre component** of GMVN the Concessionaire shall be started after the execution of Concession Agreement.
2. The **“Project Milestone” for for development of Website along with Call Centre component** of GMVN that the Concessionaire shall meet is set out below:-

PROJECT MILESTONE	TIME ELAPSED FROM THE “APPOINTED DATE”	REQUIREMENT FOR THE ISSUANCE :
Prototype presentation, submission and approval of SRS Development of application, web hosting and completion of User Acceptance Testing, Live deployment of application	6 Month (or earlier) from the Compliance Date. (“Project Development Completion Date”)	<b>“Project Milestone Completion Certificate”</b> by Concessioneing Authority (upon written intimation by the Concessionaire to Concessioneing Authority to this effect).

- a. In the event that Project Milestone is not achieved prior to expiry of 6 Month for any reason other than Force Majeure or reasons attributable to the Concessioneing Authority or any Competent Authority, the Concessionaire shall, subject to clause below, pay to the Concessioneing Authority damages for delay beyond the date on which the Development Completion was due to the extent of 0.05% of the Performance Security per day for every day of delay or part thereof until Project Milestone is achieved. Provided that nothing contained in this paragraph shall be deemed or construed to authorize any delay by the Concessionaire in achieving Project Milestone.

June 2018

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

### 2.8.1 Project Milestone Completion Certificate

Upon completion of Project works, the Concessionaire may seek the issuance of “**Project Milestone Completion Certificate**” upon written intimation to Concessions Authority of such completion. The Concessions Authority on its part, after detailed inspections of the Project relating to the requirements set out in Schedules and in compliance with the Project Milestone set out in Article 2.8 and on verifying the relevant documentation, shall promptly and in any case within 30 (Thirty) days from the date of request therefore, issue such Certificate.

## 2.9 Consideration to Concessionaire

### 2.9.1 Annual Fee

- a. In consideration of the rights, privileges and interests granted by the Concessionaire to the Concessions Authority in terms of this Agreement, the Concessions Authority shall pay to Concessionaire an Annual Fee of Rs [insert] (Rupees [insert in words] only) as per Schedule 2.
- b. The first Annual Fee shall be due and payable from the date of completion of 12<sup>th</sup> month, starting from the Appointed Date.

June 2018

- c. The Annual Fee shall be payable by the Concessioneing Authority to the Concessionaire at the Concessionaire's bank account at a scheduled bank (to be intimated later on).

June 2018

**ARTICLE 3**  
**OBLIGATIONS OF CONCESSIONAIRE**

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

**3.1 Project Development**

a. The Concessionaire shall be required to complete the operation, maintenance and Development of the Project and its related services and facilities as per the Project Milestone defined under Article 2.8 and obtain Project Milestone Completion Certificate.

**3.2 Performance Security**

- a. For due and punctual performance of its obligations under this Agreement, relating to the Project, the Concessionaire shall deliver to Concessioneing Authority and maintain Performance Security of Rs .....Lakhs Rupees .....only) in the form of a Bank Guarantee in favor of Managing Director, Garhwal Mandal Vikas Nigam Limited Concessioneing Authority, payable at Dehradun; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule 4 of this Agreement.
- b. The Performance Security shall be from a scheduled bank or a financial institution approved by the Concessioneing Authority, payable at Dehradun.
- c. The Performance Security shall be valid for a period of 12 (twelve) months and shall be renewed every year, at least 30 (thirty) days prior to the date of expiry of the Bank Guarantee. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Concessionaire. The Concessionaire undertakes and warrants to Concessioneing Authority that bank guarantee furnished as above shall be unconditional and irrevocable and

June 2018

shall continue to be effective and enforceable 6 (six) months beyond the period of 6 (six) months from the date of the expiry of the Concession Period.

- d. Upon occurrence of Concessionaire Event of Default, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish the Performance Security, in case of partial appropriation, to its original level before such encashment or appropriation of and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Concessions Authority a fresh Performance Security as aforesaid, failing which the Concessions Authority shall be entitled to terminate this Agreement.
- e. The performance security in the form of bank guarantee shall be renewed every year till the end of the Concession Period and transfer of the Project along with the Project Site to CONCESSIONAIRE. If the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security shall, subject to the Concessions Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

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

- a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement, within a period of 180 days from the Appointed Date.

June 2018

- b) The Concessionaire shall pay all duties, taxes, levies, etc. such Import Duties, etc. towards all or any of the equipments, material, furnishings, etc. to be installed in the Project apart from taking any necessary approvals / permissions for the same.
- c) The Concessionaire shall pay at its own cost all applicable, existing and future taxes / charges / fees / levies including electric bill any property tax, house tax, luxury tax, GST, stamp duty, registration charges and / or pay cost of any legal documentation charges, etc. in respect of the said Project / Project Site, as leviable.

### 3.4 Project Implementation

- a. The Concessionaire shall open maintained develop the Project in accordance with the Standards and Specifications as mentioned in Schedule 3 and as per the concept plan of the Project, approved by Concessioneing Authority, within the Project Milestone specified under Article 2.8 or such extended date as may be approved by Concessioneing Authority.
- b. The Concessionaire shall obtain all necessary approvals, permissions and sanctions for setting up of Project and other allied infrastructure and facilities.
- c. The Concessionaire shall adhere to the safe development parameters and complete the development works before the Project Completion Date or such extended date as may be approved by Concessioneing Authority.
- d. The Concessionaire may undertake Development works and services by itself or through Contractor(s) possessing requisite technical, financial and managerial expertise / capability; but in any case the Concessionaire shall and will remain solely responsible for its overall



June 2018

liabilities and obligations under the contract, overall supervision, monitoring and control of the activities of all the Contractors, sub-contractors, their employees and agents engaged under respective **“Project Agreements”** as may be necessary.

- e. For this purpose, Concessionaire shall undertake all necessary activities such as designing, planning, developing, financing, constructing, marketing, operating and maintaining the Project and the Project Site, in accordance with the provisions of this Agreement and as per Good Industry Practice.
- f. The Concessionaire shall procure and install new, specified and necessary equipments, plant, machinery, apparatus, services and its supporting infrastructure towards the Project. It shall keep all the necessary Project equipments adequately insured and shall pay regular and timely premium, at its own cost.
- g. The Concessionaire shall implement and make operational the Project as per the Project Milestone given in Article 2.8.
- h. The Concessionaire shall submit to the Concessions Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Concessions Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Concessions Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.
- i. The Concessionaire shall ensure that all the Project Agreements, to be entered into with the Third Parties, are co-terminus with the

June 2018

Concession Period/ Term of the Concession Agreement and in case of Termination of this Concession Agreement (either by efflux of time or pre-mature), Concessioneing Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, arising out of from such Project Agreements, in case they continue to accrue, shall henceforth be accrued / appropriated to the Concessioneing Authority. It is being clarified here that the similar provision shall be mandatorily incorporated in all the Project Agreements and the signed copy of the Project Agreements shall be submitted to the Concessioneing Authority for perusal.

### 3.5 Operation and Maintenance

- a) The Concessionaire shall operate and maintain the Project Facility in accordance Good Industry Practice and Applicable Laws. The Concessionaire shall throughout the continuance of this Agreement, have full control and management of Project.
- b) Prior to start the new Development activity in the project, the Concessionaire would maintain and operate the existing infrastructures of the project which are handed over by the Concessioneing Authority as per "O&M Manual" Schedule - 3.
- c) The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability, provided Concessionaire shall be solely responsible for implementation and operation maintenance of the Project in accordance with the provisions of this Agreement and it shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner.

June 2018

- d) The Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the applicable regulations and Applicable Laws. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- e) The Concessionaire shall be entitled at its own costs, expenses and consequences to perform the following:
- i. Institution and supervision of operating policies, principles, systems and procedures for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
  - ii. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
  - iii. To issue its receipts and invoice in its own name.
- f) The Concessionaire will take professional indemnity insurance in respect of the negligence of its Project Facility staff members, employees, executives, Authorities in the operation and management of the Project. The Concessionaire shall throughout the term of this Agreement maintain the professional indemnity insurance and from time to time regularly bear and pay the insurance premium in this regard.
- g) The Concessionaire shall bear and pay all expenses, taxes, due and payable in respect of the operation and management of the Project, including GST where applicable, the like and will ensure that these are paid in time and no defaults are made in respect of the same. Further the Concessionaire shall ensure that all returns in this regard are filed before the due date as per Applicable Laws.

June 2018

- h) The Concessionaire shall not in the operation of the Project do any act or omission which shall be unlawful in nature and throughout the term abide by all the law, rules, orders, regulations and other requirements as applicable for the operation and management of the Project from time to time.
- i) The Concessionaire shall keep and maintain all such books, records and reports as are required to be maintained under Applicable Laws and shall submit or cause to be submitted to appropriate authorities, all information and reports as are legally required.
- j) The Concessionaire will furnish to the Concessions Authority such information as required by the Concessions Authority with respect to operation and management of the Project.
- k) Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Project or otherwise for any reason whatsoever whether intentionally or unintentionally and the Concessions Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Concessions Authority indemnified in this regard.
- l) In the event the Concessionaire has failed to operate and maintain the Project in accordance with the Good Industry Practices and as per the provisions of this Agreement, a notice to that effect will be issued by Concessions Authority to the Concessionaire. The

June 2018

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

- m) The Concessionaire may subcontract operations/ operation and maintenance of parts of the Project Facility, provided however, that it shall be obligatory upon the Concessionaire to provide copies of all such Project Agreements entered into from time to time with Third Parties to the Concessioneing Authority, with incorporated Clauses, in all Project Agreements with such respective Third Parties, that:- (i) the period of the Project Agreement shall be co-terminus with the Term of this Concession Agreement and (ii) in case of Termination of this Concession Agreement (by efflux of time or pre-mature), Concessioneing Authority shall have the option of continuing with such Project Agreements such that all proceeds / rentals, arising out from such Project Agreements of the Project Facility, incase they continue to accrue, shall henceforth be accrued / appropriated to the Concessioneing Authority.

### 3.6 Insurance

- a) At all times during the period of this Agreement, Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Site and Project Facility in accordance with the Good Industry Practice, as required for existing infrastructure handed over by the Concessioneing Authority and required under the Financing Documents (“**Insurance Cover**”).

June 2018

- b) All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 3.7 (a) shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, the Concessions Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

### 3.7 General Obligations

The Concessionaire shall:

- a. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- b. at all times, to afford access to the Project Site to the authorized representatives of Concessions Authority, Senior Lenders, other persons duly authorized by any Governmental Agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice.
- c. Perform and fulfill its obligations under the Financing Documents.
- d. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies Concessions Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall Concessions Authority be treated as employer in this regard;

June 2018

- e. make its own arrangements for Development materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits from time to time;
- f. pay all taxes, duties, levies and outgoings, including utility charges relating to the Project;
- g. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- h. Transfer the Project to the Concessioneing Authority in fully operational and functional condition upon termination of this Agreement, in accordance with the provisions thereof.

### 3.8 No Breach of Obligations

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

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

June 2018

## ARTICLE 4

**OBLIGATIONS OF CONCESSIONING AUTHORITY**

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

- a. Any claims, liabilities and litigations arising out of in providing the Project Site free of Encumbrances, prior to the date of issue of Notice to Commence, shall be borne solely by the Concessioning Authority and it shall indemnify the Concessionaire and shall hold it harmless from any such liabilities that may arise as a result of any such transfer of the Project Site.
- b. To facilitate the Concessionaire in getting all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek under this Agreement in connection with development of the Project and the performance of its obligations hereunder;
- c. Upon written request from the Concessionaire, facilitate the Concessionaire in obtaining necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities / utilities; and
- d. The Concessioning Authority shall deliver possession of the Project Site within 30 days from the Appointed Date. Failure to do so, for any reason other than Concessionaire Event of Default, shall constitute an event of default by Concessioning Authority ("**Concessioning Authority Event of Default**").



June 2018

- e. Upon written request from the Concessionaire, provide reasonable facilitation to the Concessionaire for the purpose of discharging its obligations under this Agreement by the Concessionaire
- f. The Concessions Authority, through itself, or its nominee may undertake the overall monitoring of the Project Facility during the Development and operation, maintenance & Development period, to verify the user friendly and robust aspects of the Project Facility throughout the Concession Period.
- g. Concessions Authority shall release Annual fee amount for development to Concessionaire within 15 days of receiving invoice/bill as per Schedule 2.

June 2018

**PROJECT ENGINEER****5.1 Procedure for Appointment**

(a) GMVN shall within 15 days hereof forward to the Concessionaire a list consisting of the names accompanied by their respective profiles in brief, of at least five Persons who have the necessary expertise and are willing to act as Project Engineer for the Project. The scope of services for the Project Engineer is set out in Schedule 5.

(b) Within 15 days of receipt of the list forwarded by GMVN, the Concessionaire shall submit to GMVN names of three Persons from the list, together with its consent for appointment of any one of the three Persons as the Project Engineer.

(c) Within 30 days of receipt of the names forwarded by the Concessionaire, GMVN shall, in consultation with the Concessionaire, finalise the terms of appointment of the Project Engineer. GMVN shall, select one of the persons from the list sent by the Concessionaire and jointly along with the Concessionaire appoint the selected person and enter into a tripartite agreement. The scope of work of the Project Engineer shall include that set out in Schedule 5.

(d) The initial term of the Project Engineer shall extend upto 6 months, after which, the Concessionaire and GMVN shall mutually agree to do any one of the following;

- I. renew / extend the services of the Project Engineer, the term of which shall not exceed a period of one years at a stretch; or
- II. not renew the term or not engage a Project Engineer for the rest of the Concession Period.

**5.2 Payments to Project Engineer**

June 2018

(a) All fees, costs, charges and expenses payable to the Project Engineer in accordance with the terms of its appointment (collectively “the Remuneration”) shall be borne by the Concessionaire.

(b) The Project Engineer shall, simultaneous to submission of its invoice to the Concessionaire for payment of the Remuneration (hereinafter referred to as “Project Engineer Invoice”), submit a copy of the same to GMVN for its approval. Within 7 days of receipt of the same, GMVN shall respond in writing to the Concessionaire and the Project Engineer communicating either,

- (i) GMVN’s consent for payment of the Remuneration (“GMVN Consent”), or
- (ii) GMVN’s non-approval of the Project Engineer Invoice, clearly stating the reason/s for such non-approval.

(c) In case of non-approval, the Project Engineer shall revise such invoice to the extent necessary and resubmit the same to GMVN and the Concessionaire. GMVN shall give its observations and comments, if any, within 15 days of receipt of such revised invoice, which shall be taken into account by the Concessionaire while finalising the payment to the Project Engineer.

(d) The Concessionaire shall make payment to the Project Engineer within 10 working days of receipt of GMVN Consent. In case, GMVN does not respond, in the manner set out in Clause 5.2(b) & 5.2(c) above, then GMVN Consent shall be deemed to have been granted and the Concessionaire shall pay the Project Engineer as specified hereinabove.

### **5.3 Replacement of the Project Engineer**

(a) The Parties may replace the Project Engineer in any of the following circumstances by giving a 30 days written notice :

- (i) If, GMVN or the Concessionaire has reason to believe that the Project Engineer has not discharged its duties in a fair, appropriate and diligent manner;

June 2018

- (ii) if, in accordance with the terms of its appointment the Project Engineer resigns or notifies its intention not to continue as the Project Engineer;
- (iii) any other circumstance which in the opinion of the Parties warrants replacement of the Project Engineer.
- (iv) if GMVN decides not to renew the term of the Project Engineer.

(b) Subject to the attendant circumstances and unless the Parties otherwise agree, the procedure laid down in Clause 5.1 shall, as far as possible, be adhered to for replacement of the Project Engineer and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Development Requirements and O&M Requirements.

June 2018

## ARTICLE 6

### FORCE MAJEURE

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

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

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

June 2018

- vi. war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

## 6.2 Obligations of the Parties

- a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Project Engineer and the other Party of the same setting out, inter alia, the following in reasonable detail:
  - (i) the nature and extent of the Force Majeure Event;
  - (ii) the estimated duration of the Force Majeure Event;
  - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
  
- b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 6.2 (a), the Parties along with the Project Engineer, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
  - i. assess the impact of the underlying Force Majeure Event,
  - ii. to determine the likely duration of Force Majeure Event and,

June 2018

- iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
  
- c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

### 6.3 Performance of Obligations

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

- a) due notice of the Force Majeure Event has been given as required by the preceding Clause 6.2;
- b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of

June 2018

such notice being no excuse for any delay for resuming such performance;

- e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or reinstate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

#### 6.4 Termination due to Force Majeure Event

##### (a) Termination

- i. If a Force Majeure Event, is an event described under Clauses 6.1(a) to 6.1(e) and 6.1(i), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in 6.1 (f), 6.1 (g) or 6.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 6.1 (f), 6.1 (g) or 6.1 (h) subsists or



June 2018

is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

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

**(b) Termination Notice**

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

- I. in sufficient detail the underlying Force Majeure Event;
- II. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- III. the estimated Termination Payment including the details of computation thereof and;
- IV. any other relevant information.

**(c) Obligation of Parties**

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

- i. the Termination Payment, if any, payable by GMVN in accordance with the following clause is paid to the Concessionaire on the Termination Date and
- ii. the Project Facility including website are handed back to GMVN by the Concessionaire on the Termination Date free from all Encumbrance.

June 2018

**(d) Termination Payment**

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

- I. If Termination is due to a Force Majeure Event, described under Clauses 6.1(a) to 6.1(e), no Termination Payment shall be made by GMVN to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- II. If Termination is due to the occurrence of any event described under Clauses 6.1(f) or 6.1(g) or 6.1(h), GMVN shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value

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

- III. If Termination is due to the occurrence of any event described under Clause 6.1(i), GMVN shall, pay to the Concessionaire, Termination payment equal to 70% of the Book Value.

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

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

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

June 2018

## 6.6 Change in Law

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

- I. the enactment of any new Indian law;
- II. the repeal, modification or re-enactment of any existing Indian law;
- III. a change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

- I. coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
- II. any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
- III. any change in the rates of the Central Taxes.

(b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, GMVN shall subsequently reimburse to the Concessionaire, 50% of such Additional Costs, provided such Additional Costs is at least Rs. 75,00,000/- (Rupees Seventy Five lakh only) over the remaining Concession Period.

(c) Upon occurrence of a Change in Law, the Concessionaire may, notify GMVN of the following:

- I. the nature and the impact of Change in Law on the Project
- II. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law

June 2018

III. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost

IV. the relief sought by the Concessionaire

(d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-clause, GMVN and the Concessionaire along with the Project Engineer shall hold discussions and take all such steps as may be necessary as to determine the quantum of relief to be provided by GMVN to the Concessionaire.

(e) GMVN shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties. Escalation, if any, in Additional Cost after such date of determination shall not be payable by GMVN.

June 2018

**ARTICLE 7**  
**EVENTS OF DEFAULT AND TERMINATION**

**7.1 Events of Default**

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

**a. Concessionaire Event of Default**

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

- i. The Concessionaire has failed to achieve Project Milestone and obtain Project Milestone Completion Certificate, within the time period laid down in Article 2.8;
- ii. The Concessionaire has failed to comply with the Applicable Laws / Applicable Permits or any Rules and such failure has resulted in a Material Breach of the Agreement;
- iii. The Concessionaire has failed to implement the Project in accordance with the provisions of this Agreement and such failure, in the reasonable estimation of Concessioneing Authority, is likely to failure in operation, maintenance and achieving Project Development Completion Date.
- iv. The Concessionaire's failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- v. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 90 days;

June 2018

- vi. Any representation made or warranty as given by the Concessionaire under this Agreement is found to be false or misleading;
- vii. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up of the Concessionaire;
- viii. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by court of competent jurisdiction, except for the purpose of amalgamation or reDevelopment with the prior consent of Concessioneing Authority, provided that, as part of such amalgamation or reDevelopment and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- ix. A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- x. The Concessionaire has abandoned the Project for the consecutive period of 3 (three) months;
- xi. The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xii. The Concessionaire has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 120 days.
- xiii. The Concessionaire has created encumbrance(s) beyond the Concession Period / Term of this Concession Agreement and in violation of the provisions herein in this regard.

**b. Concessioneing Authority Event of Default**

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

June 2018

event of default by Concessioneing Authority ("**Concessioneing Authority Event of Default**").

- Failure of Concessioneing Authority to pay Annual Fee to the Concessioneaire as per this Agreement.

## 7.2 Termination due to Event of Default

### a. Termination for Concessioneaire Event of Default

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

June 2018

period allowed, Concessioneing Authority shall be entitled to terminate this Agreement by issuing the Termination Notice.

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

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Concessioneing Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding the above Clause (i), it shall in the first instance issue Preliminary Notice to Remedy to the Concessioneing Authority. Within 30 (Thirty) days of receipt of Preliminary Notice to Remedy, to Concessioneing Authority shall forward to the Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**Concessioneing Authority Proposal to Rectify**"). In case of non-submission of Concessioneing Authority Proposal to Rectify within the said period of 30 (Thirty) days, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If Concessioneing Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, Concessioneing Authority shall have further period of 60 (Sixty) days to remedy / cure the underlying Event of Default. If, however Concessioneing Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.



June 2018

c. **Termination Notice**

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

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

d. **Obligation of Parties**

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

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

June 2018

e. **Withdrawal of Termination Notice**

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

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

f. **Termination Payments**

(I) Upon Termination of this Agreement on account of Concessionaire Event of Default, prior to the Project Development Completion Date, Concessions Authority shall retain payments, if any, already received from the Concessionaire.

(II) Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessions Authority shall not make any payments to the Concessionaire. In addition, Concessions Authority shall also be entitled to forfeit and retain the Performance Security, if subsisting.

(III) Upon Termination of this Agreement on account of Concessions Authority Event of Default, Concessions Authority shall be liable to pay compensation which shall be the higher of:

- a) The aggregate of net value, as determined by an independent expert, of
- (i) tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Concessionaire and comprised in the Project, which in the reasonable judgement of the said expert are

June 2018

capable of being put to use / utilised by the CONCESSIONAIRE and (ii) the moveable assets which the CONCESSIONAIRE agrees to take over LESS any amount due to CONCESSIONING AUTHORITY from Concessionaire under this Agreement and the insurance claims claimed or received.

AND

b) Debt Dues

(IV) All payments due to the Concessionaire as calculated under Article 7.2 (f) shall be made within 30 (thirty) days of receiving the Termination Notice.

### 7.3 Rights of Concessing Authority on Termination

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

- a. Enter upon and take possession and control of the Project Facility and Project Site forthwith as per the provisions of Clause 7.6 (Hand back of Transfer Assets) of this Agreement.
- b. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Facility and Project Site;
- c. Notwithstanding anything contained in this Agreement, Concessing Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the

June 2018

employment of or engaged by the Concessionaire in connection with the Project, and the transfer of the Project Site and Project Facility by the Concessionaire to Concessions Authority shall be free from any such obligation.

#### 7.4 Accrued Rights of Parties

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

#### 7.5 Expiry of "Term" of Concession Agreement

At the end of the Term of Concession Agreement as per Article 2.7, the Concessions Authority would either run the Project Facility itself or offer it for private sector participation.

#### 7.6 Hand back of Transfer Assets

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

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

June 2018

- (ii) All assets, duly certified by the concerned regulatory / licensing / accreditation / rating agency, as given below:
- a. Structural Safety Certificate of the Project Facility from competent, reputed and recognized Structural Engineer
- Shall be transferred to Concessioneing Authority or its nomine, clear of Encumbrances and with good title;
- (iii) All immovable property, assets, structures, buildings, services, furnishings, edifices, court-areas, ways, walls, compounds relatable to Transfer Assets shall be transferred to Concessioneing Authority or its nominee, clear of all Encumbrances and with good title;
- (iv) The rights and obligations under or pursuant to all contracts relatable to Transfer Assets and other arrangements entered into in accordance with the provisions of this Agreement between Concessioneing Authority and any third party shall (in consideration of Concessioneing Authority's assumption of the obligations under or pursuant to the contracts and other arrangements) be vested in Concessioneing Authority or its nominee, clear of all Encumbrances and with good title; and
- (v) Notwithstanding anything contained in Article 7.6 (i),(ii), (iii) and (iv), prior to any transfer of the Transfer Assets, Concessioneing Authority, shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of Concessioneing Authority are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to Concessioneing Authority, no third Entity, including the counter-party of such contract shall have any right, license, title, interest, benefit, claim or demand against or over any Asset and such Transfer Asset shall be transferred to Concessioneing Authority or its nominee, free from all Encumbrances and with good title.

June 2018

- (vi) Furthermore, notwithstanding anything contained in the Article 11.1 no liability (accrued or contingent) of Concessionaire or relating to the Project Facility arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Concessions Authority or its nominees. The Concessions Authority or its nominees shall not be liable for liabilities in relation to the Project arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to Concessions Authority or its nominee or any Encumbrance existing on any of the Transfer Assets, the quantum of such liability and / or amount corresponding to such Encumbrance, shall be compensated by Concessionaire to Concessions Authority.
- (vii) Without prejudice to the foregoing, Concessionaire agrees to indemnify and keep indemnified the Concessions Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Concessions Authority as a result of any actions or omissions of the Concessionaire prior to the transfer of the Transfer Assets. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.

June 2018

## ARTICLE 8 DISPUTE RESOLUTION

### 8.1 Amicable Resolution

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

### 8.2 Arbitration

#### a. Procedure

Subject to the provisions of Article 8.1, any dispute, which is not resolved amicably, shall be finally decided by reference to arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such

June 2018

appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act.

b. **Place of Arbitration**

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

c. **English Language**

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

d. **Enforcement of Award**

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

e. **Performance during Arbitration**

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

**8.3 Adjudication by Regulatory Authority**



June 2018

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

June 2018

**ARTICLE 9**  
**REPRESENTATIONS AND WARRANTIES**

**9.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to Concessioneing Authority that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the information furnished in the bid / proposal and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- h. there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the on become of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;

June 2018

- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- j. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- k. subject to receipt by the Concessionaire from Concessioneing Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site and Project Facility shall pass to and vest in Concessioneing Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or Concessioneing Authority;
- l. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to Concessioneing Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- m. Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by Concessioneing Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

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

## 9.2 Representations and Warranties of Concessioneing Authority

June 2018

Concessions Authority represents and warrants to the Concessionaire that:

- a. Concessions Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- b. This Agreement constitutes Concessions Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- c. It has a good and valid right over the Project Site and has power and authority to grant Concession in respect thereto to the Concessionaire; and

### **9.3 Obligation to Notify Change**

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

June 2018

**ARTICLE 10**  
**MISCELLANEOUS**

**10.1 Assignment and Charges**

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

Notwithstanding anything contained in Article 10.1 (c) the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to Transfer of Assets contained under Article 6.6.

**10.2 Interest and Right of Set Off**

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest @ SBI PLR as on 31<sup>st</sup> March 2018 may be replaced to just "SBI PLR prevailing from time to time", from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

June 2018

Provided the stipulation regarding interest for delayed payments contained in this Article 10.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### **10.3 Governing Law and Jurisdiction**

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

### **11.4 Waiver**

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

### **11.5 Survival**

June 2018

Termination of this Agreement:

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

#### **11.6 Amendments**

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

#### **11.7 Notices**

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

If to Concessioneing Authority:  
Managing Director,

June 2018

Garhwal Mandal Vikas Nigam Limited,  
74/1, Rajpur Road,  
Dehradun - 248001

If to the CONCESSIONAIRE:

The Managing Director,

" \_\_\_\_\_ "

\_\_\_\_\_

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

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

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

### 11.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as



June 2018

nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

#### **11.9 No Partnership**

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

#### **11.10 Language**

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

#### **11.11 Exclusion of Implied Warranties etc.**

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

#### **11.12 Counterparts**

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

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

- a. The Concessionaire shall indemnify, defend and hold Concessing Authority harmless against any and all proceedings, actions and Third Party claims arising out of a breach by Concessionaire and its contractors, sub-contractors, agents, employees, etc. of any of its obligations under this

June 2018

Agreement except to the extent that any such claim has arisen due to breach by Concessioneing Authority of any of its obligations under this Agreement.

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

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

For and on behalf of  
Concessioneing Authority

Signed

by\_\_\_\_\_

For and on behalf of  
Concessionaire

Signed

by\_\_\_\_\_

In the presence of Witnesses:

- 1)
- 2)

June 2018

**SCHEDULE 1****Minimum Technical Specification**

The scope of this project is to develop a web-based application for the Lodge, bus and vessel Booking Management & create a Market for all hotels in Uttarakhand to market their products in the same manner. The scope of the project includes:

- Application form for uploading rooms of all Lodges across Uttarakhand, bus, vessel and Package tours. Online Booking.
- Amendment/Modification of certificate or registration information Manage different categories.
- Manage destinations
- Manage properties like, lodges, buses, vessels etc. Create new pages
- Reservation management system
- Site-wide property search
- Multi-lingual support which gives the ability to manage contents in multiple languages Mod Rewrite. Advanced SEO functionality for all modules
- Unlimited photos for each hotel including multiple upload Scalable in terms of functionality and performance
- Tiny MCE Editor integrated
- The other activities that can be managed through the system are:
  - Tracking of lodge details Generate MIS reports
  - This lodge Management System will carry the following user perspective:
    - ( 24 x7 Customer care services, Publicity campaign and social media and its management)

**PRODUCT OVERVIEW**

Lodges reservation application should be an ideal alternative to manually tracking of customers. The proposed Hotel Reservation Application shall be designed to simplify the booking process over online and it should allow us to get on with running business.

June 2018

The online web based application should automate the reservation process. Create more sales leads, track customers and more importantly help keep the repeat customers. Can analyze reservation trends and work towards your future needs. Rearrange reservations and allocate rooms without hassle.

### KEY FEATURES

- Easy to manage Lodge Information, Room Type, Room Inventory, Room Rate, Amenities, Seasonal Rate, different types of discounts and Other Charge.
- Support for multiple themes and layouts
- Secure RBAC (Role Based Access Control) system. Multi admin, Sub admin manager, power user and user based access restriction.
- 100% CMS Driven Application and ability to customized pages, layouts, images galleries and content.
- Powerful administration panel with intuitive user interface. Multi-language and Multi-currency support.
- Book online and order with invoicing support with payment Gateway. (GMVN Will Provide the Payment Gateway API)
- Powerful search and Maximum presentation of a property.

### TEMPLATES

The template should be easy to customize and help to create online booking identity. It should includes very useful modules to display all important data on the web using start of art technology including usability prioritized web design concepts, AJAX driven interface feature in hotels list page and make the interface very user friendly. It's also should offer dynamic search engine friendly URL and full control of search engine optimization feature.

### FRONTEND TEMPLATE EDITOR

- FILE UPLOADER

June 2018

- Language Support just changing Language File only.
- Publishing Customized Ads from administration area.
- Google AdSense is added by default to earn ads revenue. Adding Google Map under each Property.
- Add / Edit status of Property e.g. New, Sold, to be seen etc. Turn On /Off the features you need to include.
- Short report with "Arrange view" Details links. Viewing a Property image from various corners  
Example : back view Font view Dining Space Swinging etc.. Create sub-admin with restricted privilege.
- Add /edit/ view /remove and manage register users Activate or De-activated a User
- Dynamic change of menu color, size, height and width etc. Global Administrative setting.
- Adding unlimited number of properties with vivid details View / Edit / Delete existing properties.

## ADMIN FEATURES

Admin need to maintain everything from admin control panel and have to incorporate everything one need including automatic price and availability update as well as vast range of customer analyzing and booking report. Each property admin to manage language translations with Search Engine friendly links and meta information. The application super admin should have wide range of feature to manage most advance hotel booking system. Can also manage everything single hotels or properties and guest as well as state of art booking report with interactive graphics.

- add/modify properties (hotels/buses, vessels and package tours etc.)
- manage room type list
- manage area/location list

June 2018

- advertisement manager
- agents management

The Application should have in built paid/unpaid memberships; trial periods and paid services settings are all adjustable to our requirements.

Paid membership: can charge site members for membership in a paid group to be able to access certain site sections such as listings management section, Messages section etc. It is possible to create different membership plans with certain permissions assigned to each group, period of membership and cost. Administrator can enable/disable a free trial period of membership in a paid group.

#### **MEMBERSHIP PACKAGES**

- lodge and package upgrade / downgrade
- loyalty membership cards

#### **ADMINISTRATOR LOGIN**

Managing website from Front End WYSIWYG HTML Editors Add / Edit / Delete Unlimited Property with Details.

#### **ADMIN PANEL DASHBOARD**

- Viewing saved property by user.
- Add/Edit/Delete your Area or locations.
- Active / De-active / a property after sold or rented. Adding unlimited property types.
- Manage property amenities and photos.  
For example: Flat, House, Studio, Vacation Rentals etc.. Matching Letting or selling Property

June 2018

- Viewing active / Expired / sold or rented property list listing Customize Email
- Templates & Newsletter
- Feedback management and censoring bad words
- Categories / Sub-Categories based Photo Gallery of property Highlights management.
- Search by listing id, city, state, zip, property type, property style, min price, max price, beds, baths, min sq ft, min lot size, garage or keyword.
- Browse properties by interactive Google map

## PRIVILEGES-N-ROLES

### Managing Privileges & Roles

The most secure way to manage privileges for users and roles is to confine use of privilege to commands in a rights profile. The rights profile is then included in a role. The role is assigned to a user. When the user assumes the assigned role, the privileged commands are available to be run in a profile shell. The following procedures show how to assign privileges, remove privileges, and debug privilege use.

This Application has built-in permission system which was based on a secure RBAC architecture, so you can set permission for role (group) or given user to separated modules.

In Application, there must be three privilege levels, as well as an extra 'Administrator' privilege. The three privileges take effect per user per table, i.e. a user can have certain privileges on one table and different ones on another. By default software has three rolls such as Developer, Administrator and registered members. Roll is an encapsulated mode of permissions of various modules.

The levels are

- VIEW: ability to read data only
- EDIT: ability to read and edit data

June 2018

- **MANAGE:** ability to modify the database structure, i.e. create/delete tables, fields, reports etc., basically to build up and tear down databases. MANAGE also allows a user to unlock an individual record for editing if it has been locked.
- For people with less privilege, the user interface is simplified.

### Super Admin Privileges:

In our application model, Super admin retains un-restricted access to the application. Super admin act a "root" positioning itself top of privileges hierarchy. Unlike other applications, "Administrator" privilege remain just under "Super Admin" which allows admin to performs all administrative task with a bit of limited access.

The core idea is "Super Admin" is preserved for high tech technical staffs of web developer to configure the system/website accordingly to client's requirements. Site owner or head of team can perform his/her daily administrative jobs using "Administrator" access but admin can't garb the system due to limited privilege.

### Assigning Privileges:

As a super administrator or, to assign privileges, use the Administrator module at the bottom of pane

### Technical Requirement

Functional Area	Key Requirements
<b>Web Portal</b>	<ol style="list-style-type: none"> <li>1. Should support for the hierarchical content architecture for the Lodges', Buses, vessels and packages Content Website.</li> <li>2. Should have a back-end for managing content for the web-portal.</li> <li>3. Should have a RBAC (Role Based Access Control) system to manage content on the web-portal.</li> </ol>
<b>User Management and General Features</b>	<ol style="list-style-type: none"> <li>1. Should support creating, editing and flagging of users on the web-portal and application.</li> <li>2. Should support secure registration and signing up system.</li> <li>3. Users should have a profile which they or the manager can</li> </ol>



June 2018

	manage from the appropriate interface(s)
<b>CMS (Web Content Management System )</b>	SEO Friendly URLs Integrated and online help Modular and extensible Easy user and group management RBAC permission system Easy wizard based upgrade procedures Multiple language content support Admin panel with intuitive UI Content hierarchy with unlimited depth and size Advanced Menu Management support Allows managing revisions of content Integrated file manager w/ upload capabilities Integrated audit log Integrated document management
<b>Communication</b>	System should have support for notifications using: <ol style="list-style-type: none"> <li>1. SMS through a National SMS gateway</li> <li>2. E-Mailing through an international mail gateway</li> </ol>

### Technologies:

Front-end client-side technologies like:

- HTML5 CSS3 LESS/SASS/SCSS
- Responsive Boot Strap, frameworks AJAX
- Multiple media detection and rendering Back-end server-side Technologies:
- MVC Frameworks, like PHP-Yii/PHP-Symfony Languages like PHP, .NET
- ORMs/DALs like ActiveRecord/Doctrine/RedBean etc. REST/SOAP based API Clients
- Authentication Security
- SSL/TLS Based Secure Transactions
- My SQL ,PostgreSQL Based Scalable database
- Apache Server should be compatible with Amazon web based cloud server standards.
- Activities to be carried out in Maintenance and Support phase
- The period of support and maintenance of the web portal will be 5 years from the date of Go live/hosting at Production Server. During this phase the bidder must do following activities :

June 2018

- RFP for selection of firm for development of web portal for online registration & Management of Lodges
- Software maintenance and bug rectifications, Training to the stakeholders, if required.

**General**

- Fixing of bugs and functionally errors (within the scope of SRS). Periodically data back-up.
- Revenue Generation. Web Marketing/Sales.

**For Tourism Portal**

The IT Solution provider agency should also plan conceive and develop software solution for e-governance based on specific requirement by the department. Any other work related to marketing, publicity and awareness with media tools assigned time to time.

The solution provider should have regular interaction with the department of Tourism/GMVN .

The department may seek advice of the agency for various e-marketing related activities.

**For Reservation System**

- Generation of MIS Reporting
- Extracting Daily Reservation Reports
- Distribution of e-newsletters through e-mail to the registered users of this portal
- Assisting GMVN in analyzing various data collected through portal  
Updating of master data and user interfaces to reflect changes
- Create a conversion form for the website. Generate Leads form the website.

**Search Engine Optimization**

June 2018

- On page SEO
- Off Page SEO
- Google Analytic Update on monthly basis For Google and Bing
- PPC Campaign for Google
- Social Media Optimization
- Face Book, Twitter, Linkedin, Blogger, Digg, Stumbleupon etc., Google+ PPC Campaign for Face Book.
- The Agency should provide designated team member to manage the social networking sites 24 x 7 in consultation with GMVN officials. This will be an important activity for the agency.
- 24 x 7 Customer Support for inbound calls
- Maintain in bound No with IVR for India number. Maintain USA Local Numbers local number.
- 24 x 7 Customer support for live chat on the website
- Resource to manage live chat over the website office hours

**Preparation of e-newsletter**

Designing and producing interactive CD-ROMs, DVD-ROMs, DVDs, Blue-ray Discs, Multimedia tools, short movies, Live webcasts and any other news media component that GMVN/ Uttarakhand Tourism may require from time to time.

The term “New Media” refers to on-demand access to content, anytime, anywhere on any digital device as well as interactive user feedback, creative participation and community formation around the media content.

**Revenue through website**

- Ensure at least annual business of Rs 2 Crores through website.
- There will be monthly review for business revenue with the authority.
- One onsite resources would be deployed at Dehradun; for handling design related issues and for taking care of system related issues.

**Service I**

June 2018

Bug fixation of the existing feature/functionality as mentioned in the present SRS.(Working hours: Monday-Saturday between 9.30 AM to 5.30 PM, excepting 2nd Saturday, Sunday & National Holidays).

<i>Contacts</i>	<i>Selected Agencies</i>	<i>GMVN</i>
<i>Primary</i>		
<i>Secondary</i>		

The maintenance contract would be valid for 60 months and quarterly payment would be made on completion of each quarter.

### **Application Support**

Fixation of bugs within the current application based on the scope of work as agreed and developed in accordance to the SRS document signed by both parties. Each request would be considered as usage of ticket, which will be derived, based on the nature of the SOW mentioned above.

### **Service II**

#### ***Feature Addition I Development***

Applications and Feature Addition / Development if required will be requested by GMVN via e-mail and also via formal requirement letter (email should serve the purpose of formal letter) for the SCR.

SELECTED AGENCIES will study the scope of work and will meet GMVN for further clarifications (if required). The requirement should be identified and acted upon on meeting and mail.

Enhancements/new module or any other development is outside the scope of work. In case a change in feature, design, database, then SELECTED AGENCIES would carry a detailed study and submit a separate cost proposal for the same. GMVN would then issue SELECTED AGENCIES with necessary approvals and Purchase ORDER to execute the job.

### **Service III**

#### ***Design Upgrade***

June 2018

The following activities fall under the design upgrade -

- Graphical content in application pages

Design Upgrades if required will be requested by GMVN via e-mail and also via formal requirement letter (email should serve the purpose of formal letter). This is a separate cost activity and SELECTED AGENCIES will submit a separate commercial proposal at the time of the requirement. SELECTED AGENCIES will send a separate quote a quote after ascertaining the scope of work.

#### **Service IV**

##### ***Revenue Generation***

- Do the web Business development activity for the portal and provide guarantee for a quarterly business.
- Should generate atleast Rs 2 Crores of annual business vide the website by sales of various products.
- Contact Hoteliers, Travel Agents and other Tourism Stakeholder of the State & pursue them to put their inventory on the Portal.
- Maintain Sales, Revenue, Lead, website visitor MIS.
- Monthly review of all the above services with the authority, and a quarterly target and revenue review with the authority.
- Operation of 24 hours Inbound call center.
- Deployment of call center executives from the bidder office in 3 shifts for attending the inbound calls generated at the toll free number. Maintaining the necessary hardware for the same.
- language support i.e. Hindi, and English. Provide monthly report and analytic for the same.

##### **Deliverables of Bidder**

- Detailed Project Plan along with periodic Project Status Reports
- The detailed System Requirement Specification.

June 2018

- Source and Executable code of Application Software including any third party base software licenses.
- Technical Documentation, User Manuals and Training Materials
- Certificate on Security Audit of the portal
- User Acceptance Test Report
- Procedure Manuals related to installation, operation, administration (including backup and restoration) and such other details.
- Free Support and maintenance of software for a period of 5 years

**Desirable Timelines for Project Implementation**

Project should be completed in all respect within 6 months from issuance of LoI or signing of contract whichever is earlier.

**Acceptance, Certification and Roll-out**

As this project involves both the development and hosting of the web portal the following points related to Acceptance, Certification and Roll out shall be considered:-

- An acceptance test plan along with test cases and expected results traced to the requirement shall provided during the development and the same shall be same shall be accepted by GMVN.
- Any observations/feedback related to the test plan and test cases shall be duly factored in as relevant.
- The errors identified during testing, shall be duly rectified and resolved. Maximum of three rounds of testing shall be permitted.
- The pre-requisite for the software to be accepted is that it should have ZERO Severity Level 1 defects and should be audited and certified by the Security Audit Organization empanelled under Cert-in, Govt. of India

June 2018

**SCHEDULE 1 (B)**  
**DETAILS OF EXISTING AND PROPOSED INFRASTRUCTURE of GMVN**

June 2018

**SCHEDULE 2**  
**CONCESSION PAYMENT**

<b>Sr. No</b>	<b>Due Date (in years from Appointed Date)</b>	<b>Year</b>	<b>Amount Calculation</b>	<b>Amount in figures</b>	<b>Amount in words</b>
1.	On the Appointed Date	1			
2.	2 years	2			
3.	3 years	3			
4.	4 years	4			
5.	5 years	5			



June 2018

**SCHEDULE 3**  
**PERFORMANCE REQUIREMENT**

**Performance Requirements (SLAs)**

The purpose of this Service Level Agreement (herein after referred to as SLA) to clearly performance criteria that shall be adhered to by the bidder for the duration of the project.

Sr.No Major Area	Parameter	Requirements	Breach
<b>1. Application System Development and Impletation</b>	Major milestone during development and implementation as per project plan document.	Delay of no more than 2 weeks for any given milestone and no more than 8 weeks time cumulatively for the entire project.	Beyond 8 cumulative weeks, unless formally re-scheduled with due approvals.
<b>2.Availability of application</b>	Software solution covering all business functionalities	98% availability round the clock and Computation will be done on monthly basis.	Less than 90% of the specified limits for two consecutive quarters.
<b>3.Response time for bug fixing</b>	Time taken (after the request has been informed) to acknowledge problem	Within 24 hours from the time the bug is reported.	
<b>4.Resolution Time (Only for Bug fixing)</b>	Time taken by the Bidder to fix the problem	Problems with Severity Within 48 hours from the time of reporting.	More than the level

June 2018

**SCHEDULE 4**  
**FORMAT OF PERFORMANCE SECURITY**  
**(BANK GUARANTEE)<sup>1</sup>**

**PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE**

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

**Issuer of Bank Guarantee:**

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

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

(Hereinafter referred to as the “**Bank**”)

**Beneficiary of Bank Guarantee:**

Garhwal Mandal Vikas Nigam Limited

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.

**Context of Bank Guarantee**

Performance in respect of Concession Agreement (hereinafter referred to as the “Agreement”) to be entered between the Garhwal Mandal Vikas Nigam Limited (hereinafter referred to as the “CONCESSIONAIRE” or “Concessions Authority”) and \_\_\_\_\_ (hereinafter referred to as the “Concessionaire”) for the Development, Operation, Maintenance of Web based application including Call Centre of GMVN on Public Private Partnership (PPP) basis at Dehradun, Uttarakhand (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this

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

June 2018

Guarantee i.e. "Performance Bank Guarantee" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

**Operative part of the Bank Guarantee:**

1. At the request of the Concessionaire, we \_\_\_\_\_,  
\_\_\_\_\_ (name and address of the bank), hereinafter referred to as the "Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the CONCESSIONAIRE i.e. the beneficiary on behalf of the Concessionaire, up to a total sum of Rs. .... Lakhs (Rupees ..... Only), such sum being payable by us to CONCESSIONAIRE immediately upon receipt of first written demand from the CONCESSIONAIRE.
2. We unconditionally and irrevocably undertake to pay to the CONCESSIONAIRE on an immediate basis, upon receipt of first written demand from the CONCESSIONAIRE and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the CONCESSIONAIRE to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. .... Lakhs (Rupees ..... Only).
3. We hereby waive the necessity of the CONCESSIONAIRE demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the CONCESSIONAIRE that the CONCESSIONAIRE shall be the sole and the exclusive judge to determine that whether or not any sum or

June 2018

sums are due and payable to him by Concessionaire, which are recoverable by the CONCESSIONAIRE by invocation of this Guarantee.

5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency / validity period, except with the previous written consent of the CONCESSIONAIRE.
6. We unconditionally and irrevocably undertake to pay to the CONCESSIONAIRE, any amount so demanded not exceeding Rs. .... Lakhs (Rupees ..... Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the CONCESSIONAIRE, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_

Notwithstanding anything contained herein:

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

\_\_\_\_\_  
Authorized Signatory

June 2018

June 2018

**SCHEDULE 5**  
**SCOPE OF WORK OF PROJECT ENGINEER**

*(See Article 4)*

**1.0 Role of the Project Engineer**

1.1 The Project Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Project Engineer is to:

- (i) independently review, monitor and where required by the Agreement, to approve activities associated with the Design, Development, Operation and Maintenance of the Project to ensure compliance by the Concessionaire with the Development Requirements,
- (ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- (iii) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- (iv) review matters related to safety measures adopted by the Concessionaire for the Project.

**2.0 Scope of Services**

The services to be provided by the Project Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

**2.1 Implementation Period - Design and Planning**

Review of the following submitted by the Concessionaire:

- (i) Quality Assurance Plan;
- (ii) Implementation/ Development Plan;
- (iii) Drawings prepared by the Concessionaire
- (iv) O & M Plan - Development Period;

June 2018

## 2.2 Implementation Period - Development

The Project Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Development Requirements. For this purpose the Project Engineer shall undertake, inter alia, the following activities and where appropriate make suitable suggestions:

- (i) monitor the progress in implementation of the Project based on the Implementation/ Development Plan submitted by the Concessionaire;
- (ii) review and approve the material testing and mix designs results and recommend special tests, where required, for materials and/or completed works, require removal/substitution of unsuitable materials and /or works and report deficiencies in respect of the same to GMVN;
- (iii) review and monitor the quality assurance and quality control procedures followed by the Concessionaire;
- (iv) review the manpower and equipment deployed by the Concessionaire;
- (v) monitor the Development Works for conformity with the Project Requirements;
- (vi) verify the 'As-Built' drawings for each component of the works prepared by the Concessionaire and require removal of deficiencies found therein;
- (vii) review the safety measures implemented;
- (viii) review and ascertain the cost variation arising as a result of Change in Law and determine the Additional Cost;
- (ix) require, monitor and review the results of Tests to be carried out by the Concessionaire in accordance with the Development Requirements and/or O&M Requirements;
- (x) require suspension of whole or any part of the Development Works if in its reasonable opinion the same does not conform to the Development Requirements;

June 2018

- (xi) issue Provisional Certificate and/or Completion Certificate in accordance with the applicable provisions of the Agreement; and
- (xii) review and assist in finalisation of the O&M Manual and first annual O&M Plan prepared by the Concessionaire.

### **2.3 Operations Period**

2.3.1 During this period the Project Engineer would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Concessionaire so as to ensure compliance with the O&M Requirements. The specific activities to be undertaken would include the following :

- (i) review the O&M Plans submitted by the Concessionaire from time to time and assist the Concessionaire in finalising the same;
- (ii) monitor O&M activities (including maintenance of equipment, standards of service) and the overall quality of O&M activities so as to ensure compliance by the Concessionaire with the O&M Requirements, O&M Plan and O&M Manual;
- (iii) periodically review the O&M Manual for adequacy;
- (iv) inspect the Project Facilities at least once a month and as and when exigencies require to ascertain conformity with Project Requirements;
- (v) review and ascertain the cost variation arising as a result of Change in Law and determine the Additional Cost;
- (vi) undertake a quarterly review of the various records and registers to be maintained by the Concessionaire and suggest suitable remedial measures/ procedures, where necessary.

### **2.4 Handback of Project Facilities to GMVN**

2.4.1 At the time of handing back of the Project to GMVN at the end of Concession Period, the Project Engineer shall :

- (i) monitor and certify compliance with Project Handback Requirements and



June 2018

- (ii) issue a Certificate of Compliance with Project Handback Requirements to the Concessionaire.

## 2.5 Breach of Obligations

If during the course or upon review / inspection undertaken by the Project Engineer or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Project Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Project Engineer may deem fit and in each case the same shall be recorded.

## 2.6 Meetings, Records and Reporting

- (a) The Project Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the Development Period and once every two months during the Operations Period as also to participate in emergency or extraordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.
- (b) The Project Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
  - (i) Manpower deployed and other organisational arrangements of the Project Engineer;
  - (ii) Reviews of documents submitted to it by the Concessionaire to meet Project Requirements, such as manuals, Drawings, As-Built drawings, schedules, plans and reports;
  - (iii) Inspections undertaken and notices/instructions issued to the Concessionaire;
  - (iv) Review of compliance with Project Requirements;
  - (v) Tests;
  - (vi) Change in Law;
  - (vii) Emergency (including accidents);
  - (viii) Force Majeure Events;
  - (ix) Breaches and defaults by the Parties;
  - (x) Project Handback Requirements; and
  - (xi) Additional Facilities Handback Requirements

June 2018

- (c) The Project Engineer would be required to submit the following reports to the Parties during the Concession Period :
- (i) Implementation / Development Period
    - Monthly Progress Report (including details of slippages and remedial measures)
    - Report on Tests and report on notices Issued
    - Completion Certificate (including Provisional Certificate)
    - Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations).
    - Any other report as may be reasonably required by GMVN or as may be necessary to give effect to the provisions of the Agreement.
  - (ii) Operations Period
    - Monthly O&M Report (including Lane Availability, details of slippages and remedial measures)
    - Report on Tests and report on notices Issued
    - Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations)
    - Annual Review of O&M Manual
    - Any other report as may be reasonably required by GMVN or as may be necessary to give effect to the provisions of the Agreement.
  - (iii) Report on Project Handback Requirements.
  - (iv) Any other report as may be reasonably required by GMVN or as may be necessary to give effect to the provisions of the Agreement.

**FORMAT FOR FINANCIAL PROPOSAL**

Date :

To,  
 Managing Director  
 Garhwal Mandal Vikas Nigam Ltd.,  
 74/1, Rajpur Road,  
 Dehradun-248001.

**Re: Selection of IT solution provider agency for development of web based application for online booking system of tourist lodges, buses , vessels and package tours, maintenance and marketing of web portal of GMVN in build operate transfer mode**

Sir/Madam

We are pleased to submit our Financial Proposal for captioned Project.

Description	% of Room Revenue Charge <sup>*1</sup>
Built Operate and Transfer the Project under a 5 years BOT Concession Agreement	

\* Payable annually in terms of Schedule 2 of the Draft Concession Agreement.

We have reviewed all the terms and conditions of the Proposal Document including the Draft Concession Agreement and will undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be, no deviations from the stated terms in the PROPOSAL Document.

..... Name of the Applicant

.....Signature of the Authorised Person

.....Name of the Authorised Person

Note:

- On the Letterhead of the Applicant or Lead Member of Consortium.
- To be signed by the Lead Member, in case of a Consortium.
- The Concession Payment shall be upto two different non-zero digits of decimal.
- In case of difference in amount quoted in figures and words, the lower value would be considered for evaluation.

<sup>1</sup> In Financial Year 2017-18, total revenue from Room Tariff of GMVN was INR 21.70 Crores