



OFFICE OF THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

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**Tender No. GMDA/DEV/56/2016/12 Dated: 17/02/2017**

**NOTICE INVITING TENDER**

Sealed tender in two bid system are invited for the work of **“Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format”** on Design, Build, Finance, Operate and Transfer (DBFOT) basis.

The detailed RFP documents can be viewed and downloaded from GMDA’s website [www.gmda.co.in](http://www.gmda.co.in) . The last date for submission of bid document is 14-03-2017 upto 3.00 pm. The bid shall be opened on same date at 3.30 pm. Corrigendum, amendment to the tender document if any, shall be published in the website only.

Sd/  
(Varnali Deka, IAS)  
Chief Executive Officer  
Guwahati Metropolitan Dev. Authority  
Bhangagarh, Guwahati-781005

Memo No. GMDA/DEV/56/2016/12 (A)

Dated: 17/02/2017

Copy for information to:

1. P. S. to the Hon’ble Minister, GDD, Dispur -for kind appraisal of the Hon’ble Minister.
2. P.S to Additional Chief Secretary to Govt. of Assam, GDD, Dispur- for kind appraisal of the Addl. Chief Secretary.
3. DIPR, Dispur Guwahati-6- you are requested to publish the above NIT in three local daily newspapers one in English and two in Assamese vernacular.

Sd/  
(Varnali Deka, IAS)  
Chief Executive Officer  
Guwahati Metropolitan Dev. Authority  
Bhangagarh, Guwahati-781005

**REQUEST FOR PROPOSAL (RFP) FOR  
INSTALLATION OF LIFTS & MAINTENANCE  
OF EXISTING FOOT OVER BRIDGES IN  
GUWAHATI ON PPP MODE**

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**Tender No. GMDA/DEV/56/2016/12    Dated: 17/02/2017**



**Guwahati Metropolitan Development Authority  
Bhangagarh: Guwahati-5**

## **DISCLAIMER**

The information contained in this Request for Proposal document comprising of Section-I, Section-II Section III, Section-IV and Section-V (the "RFP" or "Request for Proposal") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of GMDA or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by GMDA to the prospective Bidders or any other person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in preparing and submitting their proposal pursuant to the Bidding Documents including this RFP (the "Bid"). This RFP includes statements, which reflect various assumptions and assessments arrived at by GMDA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for GMDA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

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

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

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

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

Sd/-  
(Varnali Deka, IAS)  
Chief Executive Officer  
Guwahati Metropolitan Dev. Authority  
Bhangagarh, Guwahati-781005

**REQUEST FOR PROPOSAL (RFP)  
FOR  
“INSTALLATION OF LIFTS & MAINTENANCE OF EXISTING FOOT OVER BRIDGES  
IN GUWAHATI ON PUBLIC PRIVATE PARTNERSHIP (PPP) FORMAT” ON DESIGN,  
BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) BASIS.**

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## Section I: Instructions to Bidders

### 1. Introduction

#### 1.1. Background

- 1.1.1 Guwahati has gradually, developed into a hub of commercial & educational institutions in the eastern part of the country. The vehicular traffic has grown in manifolds in the last couples of years which has necessitated various road widening, junction improvement at certain locations in the city. Growth in pedestrian traffic is also necessitating crossing of the major arterial roads of City which has been a concern from the point of view of safety at certain locations.
- 1.1.2 As part of overall Traffic & Transportation Planning measures and prioritizing pedestrian safety, the Guwahati Metropolitan Development Authority (the "GMDA") has decided to undertake "Installation of lifts and maintenance of existing Foot Over Bridge (FOBS) at four locations:
- i. Maligaon,
  - ii. Bharalumukh and
  - iii. Lachit Nagar and
  - iv. On GS Road in front of Assam Secretariat.
- on Public Private Partnership (PPP) Format" on "Design, Build, Finance, Operate and Transfer" (the "DBFOT") basis.
- 1.1.3 The existing Foot Over Bridges to develop with Lifts based on the site conditions.
- 1.1.4 The overarching goal of the initiative is to improve the pedestrian safety by providing safe and eased access to the pedestrians crossing the arterial and sub arterial roads there by facilitating smooth motorized traffic flow.
- 1.1.5 GMDA is now issuing "Request for Proposal and Commercial Proposals from the interested bidders for the Design, Finance, Build, Operate, Manage, Maintain and Transfer the Project. The project is proposed to be implemented on PPP basis for an Authorisation Period of 20 years exclusive of construction period further to the extension of 5 years on performance of the Successful Bidder.
- 1.1.6 The scope of the project includes Installation of lifts and maintenance of existing Foot Over Bridge (FOB's) on design, construction and operation of FOB at designated location on the sites identified by Guwahati Metropolitan Development Authority in conformity to the provisions of this RFP and Authorisation Agreement;
- 1.1.7 The selected bidder shall operate and maintain the Project Facilities in conformity to the provisions of the RFP for a specific period. The Authorisation Period defined for the project is 20 years, which excludes the construction period and the same can be further extended for another 5 years on performance of the Successful Bidder.
- 1.1.8 The Agency shall be allowed to re-cover the Investment made by him on Installation and Maintenance of Lifts & amenities by installing and selling of advertising spaces on the FOB, the bidder has to share the Revenue earned by Selling of Advertisements

display on the designated spaces on the FOB's, this revenue has to be quoted in the Commercial Bid on percentage basis.

- 1.1.9 As a support to shoulder the ROI of the Successful Bidder, GMDA will not allow any of the other allied Out of Home Media in the periphery of 100 mtrs. from the FOB in any premises may it be Govt. or Private properties, for the Out of Home Media already installed within the periphery, the permission for the same shall not be renewed after the date of the License Fees paid / expiry of Licensee Period. However Street Furniture mediums, like Bus Queue Shelters, Benches, Traffic Signage's allocated in lieu of Commercial Advertising will be allowed as per the requirement.
- 1.1.10 The Bidder will be allowed to install & display any kind of outdoor media like signage, illuminated signage's, backlit boxes, digital LED displays or any kind of emerging technology, the bidder will also be allowed to rent out the space to install small solar cell, for wi-fi connectivity and can also let out the space below the elevators and staircase for ATM, the bidder has to share with the GMDA the Net Revenue earned by the Bidder by selling of commercial spaces. The definition of the Net Revenue is as below :

**Revenue Share Percentage:**

Revenue Share is the "Percentage" of the bidder's "Net Revenue" for the Year which is defined as "the gross display amount billed by the Concessionaire to its Agent/Client/Parties (excluding production of posters etc.), as the case may be, directly or indirectly, in an arm's length transaction, as reduced by the Taxes, charges paid to other Govt. Authorities, agency commission/rebate/discount paid to the latter." An 'Arm's Length Transaction' is defined as "a transaction in which the parties (a) are unrelated and unconnected and have no overt or covert common interest, (b) are dealing from equal bargaining positions and (c) neither party is subject to the other's control or dominant influence." Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.

- 1.1.11 The project shall be developed as per the Standards and Specifications stated in this Agreement and best industrial practices.
- 1.1.12 The project would be completely financed by the Developer. In consideration the Developer shall have access to revenue accruing Advertisement rights at designated spaces in the FOB as specified in this Agreement.

**1.2 Context of the Bidding Process**

- 1.2.1 The **Guwahati Metropolitan Development Authority** ("GMDA") has decided to implement the Project through PPP by involving private enterprises to install lifts and develop project facilities in the existing the Foot Over Bridge and operate & maintain for the Authorisation Period on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis in accordance with the Development specified in the **Project RFP**). Document (the "**Bidder**", which expression shall, unless repugnant to the context, include the Members of the Consortium) shall be selected through an open competitive bidding process in accordance with the procedure set out in the Bidding Documents.

- 1.2.2 The Successful Bidder / the SPV incorporated by the Successful Bidder, (such SPV, the “**Concessionaire**” or “Authorisee”), shall be responsible for designing, engineering, financing, procurement, construction, completion, commissioning of the lifts and operation and maintenance of the foot bridges & lifts in accordance with the provisions of an Authorisation Agreement to be executed separately between the Concessionaire and the Guwahati Metropolitan Development Authority substantially in the form enclosed as **Authorisation Section Agreement IV**”).
- 1.2.3 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Authorisation Agreement or GMDA’s rights.

Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by GMDA.

### 1.3 Details of the Bidding Process

- 1.3.1 A single stage process (referred to as the “**Bidding Process**”) has been adopted for selecting Bidders for the award of the Project. This stage shall comprise of two envelopes, envelope 1: Technical Proposal, and envelope 2: Commercial proposal.
- 1.3.2 The Bidder shall download the bid document from the GMDA’s website [www.gmda.co.in](http://www.gmda.co.in). A sum of Rs. 5,000.00 (Rupees Five Thousand only) in the form of a non refundable demand draft in favour of “**CEO, Guwahati Metropolitan Authority**” payable at Guwahati, shall be submitted along with the Bid towards bid document fee. The bid not accompanied by the bid cost will be treated as non responsive bid.
- 1.3.3 As part of the Bidding Process, the Bidders are being called upon to submit their Bids in accordance with the terms specified in the Bidding Documents. The Bid shall be valid for a period of not less than 120 days from the Bid Due Date.
- 1.3.4 The Bidding Documents include this RFP and the draft Authorisation Agreement, which are enclosed. Subject to the provisions of the RFP document, the aforesaid documents and any addenda issued subsequent to this RFP document, will be deemed to form part of the Bidding Documents.
- 1.3.5 Under envelope **Technical Proposal** the Bidders would furnish all the information specified in this RFP. Only those Bidders that are qualified in conformance with the minimum eligibility conditions mentioned in this RFP and are found complying to the conditions laid down in this document, shall be eligible for evaluation of their Commercial Proposals.



1.3.6 Under envelope **Commercial Proposal** the Bidder has to quote the percentage of Revenue Share offered to GMDA, payable by the bidder during the period of Agreement the process detailed in this RFP document. The evaluation shall be on the basis of the marking system as detailed in this RFP and the Bidder securing highest Composite Score (Marks) shall be treated as the highest Bidder and will be called “Successful Bidder”

1.3.7 Letter of Intent (LoI) would be issued to the Successful Bidder by GMDA. Within 7 (seven) days from the date of issue of the LoI, the Successful Bidder shall send an acknowledgement agreeing to comply with the conditions set out therein and for the execution of the Authorisation Agreement. GMDA will promptly notify other Bidders that their Commercial Proposals have been unsuccessful and their Bid Security shall be returned within 30 (thirty) days, without interest, of the signing of the Authorisation Agreement with the Successful Bidder. The Successful Bidder shall have to enter into the Authorisation Agreement with GMDA within 30 (Thirty) days from the date of issue of the LoI. The Successful Bidder on the date of signing of the Authorisation Agreement shall:

- (a) Furnish the Performance Security for an amount Rs 10.00 lacs (Rupees ten lacs) only by way of an irrevocable Demand Draft issued by a nationalized / scheduled bank in favour of CEO, GMDA **OR** in the form of Bank Guarantee as required under the Authorisation Agreement;

Failure of the Successful Bidder to comply with the requirements mentioned in the above paragraph shall constitute sufficient grounds for the annulment of the LoI, and forfeiture of the Bid Security. In such an event, GMDA reserves the right to:

- i. Either invite the next best Bidder to match the Bid submitted by the Successful Bidder; OR
- ii. Call for fresh Bids from the remaining Bidders; OR
- iii. Take any such measure as may be deemed fit in the sole discretion of GMDA, including annulment of the Bidding Process.

1.3.8 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 1.5 below. The Bidders are required to submit their queries on this RFP by the pre-bid date. The envelopes/communications shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: **“Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format”**

#### 1.4 Schedule of Bidding Process

GMDA shall endeavour to adhere to the following schedule:

- i. Publication of RFP : 20/02/2017
- ii. Receipt of queries till : 27/02/2017
- iii. Pre-Bid Meeting Time & Venue : 28/02/2017, at IST 11.00 Hrs at Conference Hall of GMDA

- iv. Submission of Completed RFP : 14/03/2017 by 15:00 Hrs IST
- v. Opening of the Bid Time & Venue : 14/03/2017 by 15:30 Hrs IST at the Conference Hall of GMDA

In case the date of opening of the tender as mentioned above is declared to be a holiday, the bids shall be received and opened on the next working day at the same time and venue.

### **1.5 Contact details**

The Chief Executive Officer,  
Guwahati Metropolitan Development Authority.  
Bhangagarh : Guwahati-5. Assam. India  
Ph : 0361- 2529650/ 2529824  
Fax: 0361-2529991  
Email : [ceogmdaghy@gmail.com](mailto:ceogmdaghy@gmail.com)

### 3. DEFINITIONS AND INTERPRETATIONS

#### 3.1 DEFINITIONS

**“Agreement” or Authorisation** shall mean the Authorisation **Agreement”** entered among GMDA, and the Preferred Bidder.

**“Authorisation** shall mean **Percentage of Revenue Share** the fee as quoted by the bidder in its Commercial Proposal and accepted by GMDA which is payable as per the provisions of the RFP document. For avoidance of doubt the Authorisation to be paid to GMDA shall be after deducting the Statutory Advertisement tax / charges to Guwahati Municipal Corporation or any other Department as per the applicable charges and revised from time to time during the Authorisation Period.

**“GMDA”** shall mean the **Guwahati Metropolitan Development Authority**.

**“Authorisee”/shall mean “Developer”** the Preferred Bidder selected and nominated by the GMDA” to implement the Project.

**“Bid or Detailed shall Bid** mean each **or Bid** (one **Proposal** per project) submitted by the Bidder for any or all of the three projects, in response to this RFP including clarifications and/or amendments to RFP, if any.

**“Bid Security”** shall mean the security furnished by the Bidder in the form of Demand Draft, as stipulated in the RFP document.

**“Bidder”** shall mean who has responded to the RFP and submitted his Bid in response to the RFP.

**“Bid Evaluation** shall mean **Committee”** the committee constituted by the GMDA for evaluating the Bids.

**“Compliance** shall be as **Date”** defined in the Draft Authorisation Agreement.

**“Commercial Operation** means the **Date”** date upon which **or** the **“COD”** Authorisee commences commercial operations of the Project.

**“Commercial** or **“Price Proposal”** shall **Bid”** have the meaning as set forth in the RFP document.

**“Concession Period”** or shall mean a period of 20 years, from the Commercial Operations Date (COD) and extension of further 5 years on performance of the Successful Bidder.

**“Due Date”** shall mean the last date for submission/receipt of the Bid, as mentioned in the RFP document.

**“Firm”** shall mean a single legal entity, which is a Registered Body.

**“Grantor”** shall mean **Guwahati Metropolitan Development Authority**.

**“Lenders”** shall mean any person(s)/ firm(s) based in India or abroad providing financial assistance, loans, funds, or other credit facilities to the Authorisee under any financing agreements for the project.

**“Letter of Intent”** shall mean the letter **or** to be **“LoI”** issued by GMDA to the Preferred Bidder conveying intention of award of the Project/Authorization, in accordance with the

terms of this RFP.

**“Minimum Development shall mean Obligations”** the Minimum Development Requirements to be met by the Preferred Bidder /Authorisee in implementation of each of the Projects; the details of the Minimum Development Obligations are given in the RFP.

**“Operations means Period”** the period commencing from COD and ending on the expiry or prior termination of this Agreement Period;

**“Preferred Bidder”** shall or mean **Successful** the Bidder, whose composite score is highest as a result of the Bid evaluation process as set forth in this RFP document.

**“Project Cost”** the estimated total landed cost of each Project. The components would include the costs incurred for carrying out the Project related activities such as formulation, development, design, engineering, finance, construction, interior decoration, etc.

**“Project”** means Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format subject to the provisions of this RFP and Agreement, (i) design, financing, construction at the site, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project facilities, execution of the works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Authorisee during the Authorisation Period; and (ii) the transfer of the Project/Project Facilities by the Authorisee to Grantor or its nominated agency at the end of the Authorisation Period by efflux of time or prior termination;

**“Project Agreement”** shall mean Authorisation Agreement and any other legal documents as mutually agreed to between the GMDA and the Preferred Bidder, necessary for implementing the Project.

**“Project Completion** shall mean the total **Period”** period in which the construction of the entire project (as per the approved DPR/ drawings) and certified by Grantor.

**“Request for Proposal** shall mean the Bid documents **or RFP”** comprising Section I to V and addendum if any.

**“Taxes and Duties” shall mean** all taxes, duties, fees, charges, cess, levies, etc. payable as per applicable laws in connection with the development, operation and management of the Project.

**“Technical Criteria”** shall mean the **or** criteria **“Criteria”** stipulated in the RFP, which is required to be complied by the Bidder based on his Technical Bid to become eligible for opening and evaluation of his Price Bid.

### 3.2 INTERPRETATION

In the interpretation of this RFP, unless the context otherwise requires:

1. The singular of any defined term includes the plural and *vice versa*, and any word or expression defined in the singular has the corresponding meaning used in the plural and *vice versa*;
2. Reference to any gender includes the other gender;

3. Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital of this RFP;
4. A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
5. The terms “include” and “including” shall be deemed to be followed by the words “without limitation”, whether or not so followed;
6. Any reference to a person shall include such person’s successors and permitted assignees;
7. A reference to a “writing” or “written” includes printing, typing, lithography and other means of reproducing words in a visible form;
8. Any date or period set forth in this RFP shall be such date or period as may be extended pursuant to the terms of this RFP;
9. A reference to “month” shall mean a calendar month, a reference to “week” shall mean a calendar week and a reference to “day” shall mean a calendar day, unless otherwise specified.
10. The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this RFP mean and refer to this RFP and not to any particular Article, Clause or Section of this RFP. The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this RFP so specified;
11. In the case of any conflict, discrepancy or repugnancy between the provisions of RFP documents, provisions of the Authorisation Agreement shall prevail over and supersede the provisions of other documents.
12. The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of this Agreement;
13. All capitalized words and expressions used in the RFP but not defined therein shall have the same meaning as ascribed to them in the Agreement.

#### **4. GENERAL INFORMATION AND INSTRUCTIONS**

##### **4.1 CONTENTS OF THE RFP DOCUMENT**

The RFP documents are those stated below, and should be read in conjunction with any Addenda issued.

- i. Section I: Instruction to Bidders**
- ii. Section II: Development Controls and Technical Specification**

- iii. **Section III: Formats for Bids Submission (Appendices)**
- iv. **Section IV: Draft Authorisation Agreement**
- v. **Section V: Commercial Offer**

#### **4.2 INTRODUCTION TO RFP**

- 4.2.1 This section should be read in conjunction with other sections of RFP. The words and expressions, which are defined in this Section of RFP i.e. Instructions to Bidders (ITB), have the same meaning when used in the other Sections of RFP, unless separately defined.
- 4.2.2 The ITB sets out the bidding procedure and provides necessary details for the Bidders to prepare their Bid/s for the subject Project/s. The prescribed formats for submission of Bids are as per the Section-III of the RFP.
- 4.2.3 The Bidders are advised to submit their Bids complying with the requirements stipulated in the RFP document. The Bids may be rendered disqualified in case of receipt of incomplete Bids and/or the information is not submitted as per the prescribed formats.

#### **4.3 BIDDER'S RESPONSIBILITY FOR DATA & SITE/S VERIFICATION**

- 4.3.1 While preparing the Bid, the Bidder shall consider the information provided in this RFP in totality and is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of the RFP will be at the Bidder's own risk and may lead to disqualification of the bid as being non responsive.
- 4.3.2 The technical details given in Section II of RFP are based on the site status and assumptions of GMDA or its Advisors. However, the Bidders shall be wholly responsible for all the details of their Bids, the physical and site conditions, etc. In essence, after the Bid is submitted, the Bidder shall be the 'owner' of all the data, which forms the basis of the Bid and shall have no claims whatsoever on GMDA or its agencies or its Advisors regarding the accuracy of the data or designs, information, etc. furnished in the RFP.
- 4.3.3 It would be deemed that prior to the submission of the Proposal, the Bidder has:
  - a. Made a complete and careful examination of requirements and other information set forth in this RFP document
  - b. Examined all the relevant information as it has received from GMDA in respect of the project/s
  - c. Made a complete and careful examination to determine the difficulties and matters incidental to the performance of its obligations under the Authorisation Agreement, including but not limited to:
    - i. The Project Site
    - ii. Availability of suitable materials and/or technology for construction

iii. All other matters that might affect its performance under the Authorisation Agreement

4.3.4 Bidders shall carry out any surveys, investigations etc. at their own cost and risk.

#### **4.4 BIDDER'S ELIGIBILITY CRITERIA**

##### **4.4.1 General Eligibility**

The bidder can be a registered Indian Company under "The Company Act, 1956"/ Partnership firm/ Proprietorship firm/LLP.

In case of a consortium the same shall not consist of more than two companies and shall be formed under a duly stamped consortium agreement. In the event of a consortium, one of the partners shall be designated as a "Prime Bidder". In case of Consortium the bidder has to define their roles and responsibilities for smooth functioning of the project. An original copy of the agreement between consortium members should be submitted.

The Bidder (Lead & Consortium) should have VAT & Service Tax Registration.

The Lead Bidder should have an average annual Audited turnover of Rs.40.00 Crores (Rupees Fourty Crores) for the last three years i.e. FY 2013-14, 2014-15 and 2015-16. In case of Consortium, each of the consortium partner should have an average annual turnover of Rs. 20.00 Crores (Rupees Twenty Crores) for the last three years i.e. FY 2013-14, 2014-15 and 2015-16. The total billing from Outdoor Advertising services rendered/capitalized billing either from Audited Statement of Accounts or Certificate from Chartered Accountants shall be taken as the turn over.

A Solvency Certificate of Rs.10.00 Crores (Rupees Ten Crores only) issued recently by any Nationalized/ Scheduled Bank should be submitted by the bidder (lead or consortium) along with the technical bid documents

The Net Worth of the bidder (lead or consortium) should be minimum of Rs.10.00 crores (Rupees Ten Crores only) in the last financial year i.e. 2015-2016. (Attach CA Certificate)

The bidder (Lead or Consortium) shall have minimum three years of experience in the field of outdoor advertising for installation and maintenance of Outdoor media items OR similar experience of constructing / under construction of at least 3 FOB's. This experience shall be on permanent structures like Unipoles/ Bi-poles/ Hoardings/ Skywalk (FOB) / Bus Shelters/ Digital or similar other structures for Government or Semi Government Department/ Public Sector Undertakings/ Corporations. To claim their experience, bidders shall produce the relevant documents like, copy of agreements and work orders duly notarized by the Notary.

The Bidder (Lead or Consortium) should have ISO certification for quality process.

The Bidder (Lead or Consortium) should have an experienced team of Architects, Engineers (Civil / Structural / ), Master in Business Administration, Chartered



Accountant, Basic office staff and technical Staff on their payroll or hired for the successful implementation and operations of the project.

The bidder shall submit Brief Presentation on detailed installation plan, time schedule, mock designs, responsibility towards environment, additional facilities to GMDA, eco-friendly technology, international designs with use of emerging display management technology, brief presentation of participating company, work in hand, projects executed, clients handled list, national presence,

The Bidder should not be debarred / blacklisted by any of the Govt. authority in last three years. The Bidder has to give an undertaking to be signed by authorized signatory to this effect. If the undertaking is found to be false at a later date after selection of bidder OR after Agreement the contract is liable for termination with immediate effect.

#### **4.5 NON-COMPLIANCE WITH RFP**

GMDA reserves the right to terminate a Bidder's participation in the bidding process at any time, should GMDA consider that a Bidder has, without the prior consent, failed to comply with the procedures and requirements prescribed in the RFP.

#### **4.6 COST OF BIDDING**

The Bidder shall bear all costs associated with the preparation and submission of its Bid, including site visits, field investigations, data collection, analysis, etc. as also any discussions/negotiations. GMDA shall not be responsible or liable for any such costs.

#### **4.7 VALIDITY OF BID**

- 4.7.1 The Bids submitted shall remain valid for 120 days from the Due Date of submission.
- 4.7.2 In exceptional circumstances, prior to the expiry of the original Bid validity period, GMDA may request the Bidders to extend the period of validity for a specified additional period. The request for the extension shall be made in writing. Bidder will not be permitted to modify their Commercial Proposal, but will be required to extend the validity of the Bid Security for the period of extension.

#### **4.8 BID SECURITY**

- 4.8.1 The Bidder shall furnish, along with the Bid for each project separately, Bid Security of Rs 1,00,000.00 (Rupees one lacs) only of this RFP, in the form of Demand Draft in favour of **CEO, Guwahati Metropolitan Development Authority** from any Nationalised/ Scheduled Bank having its branch at Guwahati.
- 4.8.2 Any Bid not accompanied by the Bid Security in the manner stated above shall be rejected by GMDA as non-responsiveness and their Bids shall not be opened for evaluation.
- 4.8.3 The Bid Security of unsuccessful Bidders will be returned within 30 days of signing of Authorisation Agreement with the Preferred Bidder.



- 4.8.4 The Bid Security shall be extended beyond the original validity period in case the signing of Authorisation Agreement is delayed due to any reason.
- 4.8.5 The Bid Security shall become liable for forfeiture in the event of the following:
- i. If the Bidder refuses to accept the correction of errors in his Bid, or
  - ii. If the Bidder submits a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by GMDA, or
  - iii. The Preferred Bidder fails to sign the Authorisation Agreement as stipulated in the RFP, or
  - iv. If the Preferred Bidder fails to pay the Project Development Fees and/or fails to provide the Performance Security as per the terms and conditions specified in the RFP within the stipulated time period as specified in the RFP/LoI.

#### **4.9 MISCELLANEOUS INSTRUCTIONS**

- 4.9.1 GMDA reserves the right to disqualify Bidders at any stage of the bidding process if the details submitted are found to be incorrect or untrue.
- 4.9.2 Bids that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP might be considered nonresponsive and may be liable for rejection.
- 4.9.3 Adherence to formats, wherever prescribed, is required. Non-adherence to formats might be a ground for declaring a Bid non-responsive.
- 4.9.4 All communication and information shall be provided in writing and in English language only.
- 4.9.5 All financial data shall be given (converted) in Indian Rupees only. The conversion ratio has to be specified clearly.
- 4.9.6 All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of conflict between amounts stated in figures and words, the amount stated in words will be taken as correct.
- 4.9.7 No change in, or supplementary information to a Bid shall be accepted once submitted. However, GMDA or any of its advisors/ agencies/ consultants reserves the right to seek additional information and/ or clarifications from the Bidders, if found necessary, during the course of evaluation of the Bid. Non-submission, incomplete submission or delayed submission of such additional information and/ or clarifications sought by GMDA or any of its agencies/consultants may be a ground for rejecting the Bid.
- 4.9.8 If any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by GMDA or

any of its agencies/consultants/advisors, is found to be incorrect or is a material misrepresentation of facts, then the Bid shall be liable for rejection. Mere clerical errors or bonafide mistakes may be treated as an exception at the sole discretion of GMDA or any of its advisors/ agencies/consultants and if GMDA or any of its advisors/ agencies/ consultants is adequately satisfied.

#### **4.10 BID RESPONSIVENESS**

4.10.1 A Bid shall be deemed “non-responsive” if it does not satisfy any of the following conditions:

- i. It is not received by the Due Date and time
- ii. It does not include sufficient information/ details for it to be evaluated and/or is not in the formats specified in this RFP.
- iii. It is not signed and/or sealed in the manner as specified in this RFP.
- iv. The Bid Document Fee is not submitted by the bidder along with the Bid or submitted in any other form other than that prescribed in the RFP.
- v. The Bid Security is not submitted by the Bidder along with the bid or submitted in any other form other than that prescribed in the RFP.

4.10.2 Non-responsive Bids shall be liable for rejection at any stage during the Bid evaluation process and the decision of GMDA in this regard is final and binding.

#### **4.11 PRE-BID CONFERENCE**

4.11.1 A pre-bid conference will be held on the date specified in the RFP (Schedule of Bidding Process), at the office of GMDA and the Potential Bidder/ Bidder’s designated representative(s) are invited to attend the same.

4.11.2 *The purpose of the pre-bid conference will be to clarify queries of the Bidders related to the Project and Project site and RFP document, if any.*

4.11.3 The Bidders should submit the queries in writing or by fax or e-mail and the same should reach to GMDA at least two (2) working days before the pre-bid conference along with a soft copy of the same to GMDA by email.

4.11.4 Minutes of the pre-bid conference will be placed in the website of GMDA, which will subsequently form an addendum to this RFP, as required.

#### **4.12 CLARIFICATION & AMENDMENT OF RFP DOCUMENT**

4.12.1 Bidder requiring any clarification on the RFP document shall request GMDA office in writing or by e-mail or facsimile (any reference to either E-mail or facsimile shall be interpreted to include the other) at the address indicated in the RFP. GMDA will respond to any request for clarification, which is received before two working days from the Pre-Bid Meeting to enable other Bidders to react/incorporate prior to the Due Date. Copies of response given by GMDA will be placed in the websites of GMDA, including a description of the query, but without identifying its source.

- 4.12.2 The Bidders shall note that reliance upon information/ clarification that is provided by any other source shall be at the risk of the Bidders.
- 4.12.3 At any time prior to the Due Date, GMDA may amend the RFP document by issuing an addendum.
- 4.12.4 Any addendum thus issued shall be part of the RFP document and shall be communicated by mail or by fax to all the Bidders who have attended the Pre Bid Conference and shall be published in GMDA website.

#### **4.13 FRAUD AND CORRUPT PRACTICES**

- 4.13.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOI and during the subsistence of the Authorisation Agreement. Notwithstanding anything to the contrary contained herein, or in the LOI or the Authorisation Agreement, GMDA shall reject a Bid, withdraw the LOI, or terminate the Authorisation Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Authorisee, as the case may be, if it determines that the Bidder or Authorisee, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, GMDA shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority towards, inter alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 4.13.2 Without prejudice to the rights of the GMDA under Clause hereinabove and the rights and remedies which the GMDA may have under the LOI or the Authorisation Agreement, if a Bidder or Authorisee, as the case may be, is found by GMDA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOI or the execution of the Authorisation Agreement, such Bidder or Authorisee shall not be eligible to participate in any tender or RFP issued by the GMDA during a period of 2 (two) years from the date such Bidder or Authorisee, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.13.3 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:
- a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of GMDA who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOI or has dealt with matters concerning the Lease Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry

of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOI or after the execution of the Lease Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOI or the Lease Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

#### **4.14 REJECTION OF BIDS**

4.14.1 GMDA reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for GMDA to accept any Bid or to give any reasons for their decision.

4.14.2 GMDA reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

### **5. BIDDING PROCESS**

5.1 The Tenders complete in all respects shall be received in the Office of the Chief Executive Officer, Guwahati Metropolitan Dev. Authority, Bhangagarh, Guwahati–781005, Assam”.

#### **5.2 Opening of tenders**

5.2.1 The bidders shall submit both the Technical & Financial bid as per Cl. 1.3 of Instructions to Bidders.

5.2.2 The Technical bid shall be opened on date as per Cl. 1.4 of ITB and the bidder would be evaluated on the chart table given below:

**Technical Evaluation/marketing chart**

<b>Sr. No.</b>	<b>Conditions</b>	<b>Maximum Marks</b>
1	Annual Average Turnover in last 3 financial years to be Rs 40 Crores	15
2	Having net worth of Rs 10 Crores as on 31 <sup>st</sup> March 2016.	15
3	Experience in the field of Outdoor Media Ownership & construction of FOB	15
6	ISO Certification	5
7	Experienced team of <ul style="list-style-type: none"> <li>a. Architect</li> <li>b. Civil / Structural / Electronic Engineer</li> <li>c. MBA</li> <li>d. Chartered accountant</li> <li>e. Basic office staff - at least 04 nos. (e.g. draftsman, typist, data-entry operator, accountant)</li> <li>f. Technical staff - at least 02 nos. (e.g. creative designer , 3D animator, commercial artist)</li> </ul>	10
<b>Maximum Total Marks</b>		<b>60</b>
8	Brief Presentation on mock designs, installation plan, material specification, responsibility towards environment, additional facilities to GMDA, eco-friendly technology, international designs with use of emerging display management technology, brief presentation of participating company, work in hand, projects executed, clients handled list, national presence.	40
<b>Maximum Technical Marks</b>		<b>100</b>

**EVALUATION**

The bidder will be given marks on evaluation of the technical bid as per the above which shall be the “Technical Score” (St). The Bidder who had secured 60 % marks in the Technical Score will be considered qualified for further process of opening of Financial Bids. Bids securing less than 60 % marks in technical evaluation will be considered as non-

responsive to the terms & conditions of the tender reference and financial proposals of the same will be returned non-opened.

The Highest Financial Proposal (Fm) (*i.e; the highest percentage of revenue share quoted by the bidder to be offered to GMDA*) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in below para. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) Using the formula below:

Total Combined Composite Score (T S) =  $St \times T\% + Sf \times P\%$ . The Agencies achieving the highest combined composite technical/ financial score will be awarded the package.

The formula for determining the financial scores is the following: [ $Sf = 100 \times F/Fm$ , in which Sf is the financial score, Fm is the highest percentage quote, and F the percentage of the proposal under consideration] the weights given to the Technical and Financial Proposals are: T= 0.80, and P= 0.20.

The Bidder securing the highest Combined Composite Score will be allotted the tender, and has to pay the GMDA the Revenue Share amount for the particular financial year.

## 6.0 COMMON INSTRUCTIONS

6.1 The Bid must be submitted no later than the date specified in the ‘Schedule of Bidding Process’ at the address mentioned above in the RFP.

6.2 SIGNING OF BID: The Authorized Signatory shall sign or initial each page of the Bid documents along with the stamp of the bidding firm/Lead Member and return the same. They should also sign & stamp each page of the RFP (including the Draft Authorisation Agreement) issued & return the same along with bid to GMDA.

6.3 LATE BIDS: The Bid received after the deadline for its submission will not be considered. It is the Bidder’s responsibility to ensure that the Bids are submitted through e-procurement portal before the Due Date and Time.

6.4 NO MODIFICATION OR NO WITHDRAWAL OF BIDS: The Bidders are neither allowed to make any modifications to the Bid submitted nor withdraw the Bid at any point of time after submission.

6.5 LANGUAGE OF THE PROPOSAL: The Proposal and related documents to the Proposal and all correspondence exchanged between Bidder(s) and GMDA shall be written in English. Supporting documents and printed literature furnished by the Bidder(s) in another language provided they are accompanied with accurate translation of the relevant passages in the English language. Supporting materials, which are not translated into English, will not be considered. For the purpose of interpretation and evaluation of the proposal, the English language translation shall prevail.

6.6 CURRENCY OF PROPOSAL AND PAYMENT: The currency for the purpose of this RFP shall be Indian Rupees

## **7. BID OPENING AND EVALUATION**

### **7.1 BID OPENING**

7.1.1 The Technical Proposal will be opened on as per Cl. 1.4 of ITB.

7.1.2 The Commercial Proposal of the Bidders who qualify in the evaluation of Technical Proposals only would be opened.

### **7.2 PROCESS TO BE CONFIDENTIAL**

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations for the award of a contract shall not be disclosed to the Bidders or any other persons not officially concerned with such process until the process is completed and issue of the LoI to the Preferred Bidder has been announced.

### **7.3 CLARIFICATION OF BIDS**

7.3.1 To assist in the examination, evaluation, and comparison of Bids, GMDA may, at its discretion, ask any Bidder for information/ clarification/ substantiation.

7.3.2 In addition, GMDA may utilize services of any other consultants/advisors/ experts to assist in the examination, evaluation and comparison of Bids.

7.3.3 However, clarifications if any required from Bidder, shall be in written form and will be communicated to Bidder by GMDA.

### **7.4 CORRECTION OF ERRORS**

Bid determined to be substantially responsive will be checked for any arithmetic errors. Wherever there is discrepancy between the amounts in figures and in words, the highest amount will be considered; and

- a. The corrections made by GMDA, as explained above, shall be considered as binding upon the Bidder.
- b. If the Bidder does not accept the corrections in the Bid, the Bid may be summarily rejected and Bid Security may be forfeited.

### **7.5 CONFIDENTIALITY**

The confidentiality of the Technical Proposal of each Bidder will be respected by GMDA and will not be divulged unless required by operation of law. The contents of the Technical Bids and any other non-proprietary information, of the Preferred Bidder may be made public at the sole discretion of GMDA.

## **8. AWARD OF PROJECT/ SIGNING OF AUTHORISATION AGREEMENT**

### **8.1 GMDA'S RIGHT TO REJECT ANY OR ALL BIDS**

GMDA reserves the right to accept or reject any Bid, and to annul the bidding process and reject all bids, at any time prior to the award of Authorization, without thereby incurring any liability to the affected Bidder or Bidders and /or any obligation to inform the affected Bidder or Bidders of the grounds for its action. After opening of the



Commercial Proposals in the event that the proposal are not upto the expectations of GMDA, GMDA may reject all the bids and annul the bidding process.

## **8.2 ISSUE OF LOI AFTER EVALUATION OF THE BIDS AND APPROVAL OF GMDA**

Upon completion of the Bid evaluation process, acceptance of the Bid and intention of award of the Project/Authorisation would be conveyed by GMDA to the Successful Bidder, who satisfies all other compliance requirements. The Letter of Intent (LoI) would be issued by GMDA to the Successful Bidder by fax or e-mail confirmed by a letter.

## **8.3 FULFILMENT OF LOI CONDITIONS**

The Successful Bidder needs to fulfill the following LoI conditions that are pre-conditions for agreement signing.

- 8.3.1** Submission of Construction Performance Security as specified in the Bid Summary of the RFP along with the Demand Draft within 15 days from the date of issue of LoI.
- 8.3.2** If the Preferred Bidder fails to fulfil the above conditions within the stipulated period, GMDA will have a right to reject the Bid by forfeiting the Bid Security of the Preferred Bidder and consider the offer to other bidder as per the provisions of this RFP. The decision of GMDA in this regard is final and binding.

## **8.4 SIGNING OF LEASE AGREEMENT**

- 8.4.1** The Preferred Bidder shall sign the Authorisation Agreement with GMDA within 15 days of issue of LoI upon fulfilling the requirements mentioned as above.
- 8.4.2** If the Preferred Bidder fails to sign the Authorisation Agreement with GMDA, the Bid Security of the Preferred Bidder shall be forfeited. In that event, GMDA shall have right to award the Project to other bidder as per provisions of this RFP and sign the Authorisation Agreement accordingly.
- 8.4.3** GMDA shall reAuthorisationthe Bid Security to the Preferred Bidder only upon signing of the Authorisation Agreement with GMDA may consider adjustment of the same towards any payments to be made by the Successful Bidder as a pre condition for signing of the authorisation agreement.

## **8.5 AUTHORISATION PERIOD**

The Authorisation Period shall be 20 years (Twenty years) from the date of Commercial Operation Date (COD) of the project, and can be further extended for a period of 5 years on the performance of the Successful Bidder

## **9. FORCE MAJURE**

- 9.1** If during the pendency of the AuthorisationPeriod any of the FOB need to be shifted dismantled etc. due to any developmental taken by GMDA or any other Govt. authority, in such case the compensation shall be paid by the GMDA in following manner



- a) If the project facility has to be shifted or totally dismantled under 7 years of the start of the Authorisationperiod, then the Successful Bidder will be liable for 100% compensation of the investment incurred for the development and upliftment of the particular FOB.
- b) If the project facility has to be shifted or totally dismantled after 7 years but till 15 years from the start date of the Authorisationperiod, then the Successful Bidder will be liable for 60% compensation of the investment incurred for the development and upliftment of the particular FOB.
- c) If the project facility has to be shifted or totally dismantled after 15 years from the start date of the Authorisationperiod, then the Successful Bidder will be liable for 20% compensation of the investment incurred for the development and upliftment of the particular FOB.

9.2 If the particular FOB has to be removed /shifted to other location for certain period during the pendency of the Authorisationperiod, then the total cost of dismantling and re-installation of the FOB will be incurred by the Successful Bidder, whereas GMDA will compensate the total expenses made for this arrangement, GMDA may adjust this amount of compensation by extending the Authorisationperiod OR by monetary compensation.

SECTION II  
DEVELOPMENT CONTROLS  
AND  
TECHNICAL SPECIFICATIONS

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## 1. DEVELOPMENT BRIEF

1.1 The responsibility of the Bidder shall include all activities that are required to be undertaken, in order to conform with the Minimum Development Obligations, Use Allocation provided in this section of RFP, provisions of the Planning & Building Standards of Guwahati Metropolitan Development Authority. The facilities would need to be planned, designed and constructed in accordance with the *Specifications, Standards, Design Guidelines and 'Maintenance & Performance Standards'* provided in this section of RFP.

### 1.2 SCOPE OF WORK

The scope of work includes but not limited to:

**“Installation of lifts of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis.**

- a. Design, finance, construct, operate, maintain and manage the project facilities including ancillary/support infrastructure as per technical specifications provided in the document
- b. Meet the requirements laid down by the Competent Authority

### 1.3 PROJECT LOCATIONS –

*Locations are enclosed at the end of this section of RFP.*

Locations from Google Map:

## 2.0 DEVELOPMENT CONTROLS

All the Applicable Development Controls and Regulations for development of existing FOBs in the proposed locations shall be as per the prevalent rules & regulations of Government of India, Government of Assam and the amendments thereof.

The selected Developer shall ensure that the Project design and development is compliant with ‘National Highway Authority of India (NHAI)’ regulations or State PWD Department. The project components including access to project facilities like pavements, signage, etc. shall be as per MORTH (Ministry of Roads, Transport and Highways) or State PWD Department specifications. The structures like staircases, lifts etc. shall adhere to the standards/ regulations of National Building Construction Code (NBCC) or State PWD Department and BIS. Norms regarding Fire protection and detection as stipulated by National Fire Protection Authority (NFPA) or State Authority shall be considered in the design and construction of project facilities as may be necessary. Overall, the performance of the project facilities shall comply/ satisfy as per ISO 9001:2008 standards.

The selected Developer shall also confirm to any other applicable stipulations and guidelines issued by any other statutory authorities. The developer shall consider employing solar energy to meet part of the power requirements of the project facilities like lighting in the sky walk, lighting of the advertisements, etc.

## 3.0 PROJECT COMPONENTS

- a. GMDA envisages creation of state-of-the-art modern Foot Over Bridges with Lifts in Guwahati at four locations at
  - (i) Maligaon,
  - (ii) Bharalumukh

- (iii) Lachit Nagar and
- (iv) On GS Road in front of Assam Secretariat.

The selected developer is expected to design, install lifts and operate & maintain the project facility for seamless movement of passengers/ commuters and pedestrians on the FOBs.

- b. The developer may explore mechanism for renewable energy generation (like solar panels) which can be utilised for operation of project facilities and allied facilities that would make the facility self sustainable and also result in reduced operational expenditure.

### **3.1 COMPONENTS**

- i. Installation and commissioning of 2 Lifts with capacity of carrying atleast 6 (six) passengers connecting the landing and the Skywalk including all civil and electrical works.
- ii. Advertisement panels on both exterior faces of FOB and other designated places within the FOB
- iii. Uninterrupted Power supply for the above projects components.
- iv. Installation of ATM facility, as per the available of space under the staircase section of FOB.

### **3.2 PUBLIC UTILITIES**

Utilities - Signage, Foot Path/ Pavement, Barricading, Dust Bins/ATMs at FOBs

### **3.3 MINIMUM DEVELOPMENT OBLIGATIONS**

The project components/ facilities as part of Minimum Development Obligations (MDOs) specified as in Cl. 5 above shall be designed and constructed by the selected developer as per the specifications within the time period of Eight Months.

### **3.4 ADVERTISEMENT PANELS**

The selected developer shall be allowed to put advertisement panels for external display on both sides of the skywalk without obstructing external view. More specifically mentioned in this section of the RFP. No other commercial/ optional facilities other than the one mentioned here shall be allowed without prior approval of GMDA.

## **4.0 TECHNICAL SPECIFICATIONS AND STANDARDS**

### **4.1 SITE DEVELOPMENT RELATED SPECIFICATIONS**

- a) All the project components/ facilities shall be as per the design approved by GMDA and shall not obstruct the pedestrian access using footpaths, skywalks (FOBs).
- b) The Developer shall provide signage, barricading, etc. to enumerate the access to/ from the project facilities. Recommended practices for road signs as per IRC 67:2001 and for pedestrian facilities as per IRC 103:1988 shall be followed.

### **4.2 CIVIL AND STRUCTURAL SPECIFICATIONS**

- a. All structures should be designed for seismic zone-V and shall be in accordance with the latest Indian Standard Codes.

- b. All materials to be used for the construction shall confirm to the specifications and standards laid down in Part V of National Building Code on building material and Part VII of National Building Code on construction practices and safety, latest edition as prevalent at the time of execution of work.
- c. RCC components shall be designed as per IS 456: 2000 and other relevant codes.
- d. Developers are advised to carry out their own investigations related to soil condition, strata, bearing capacity and other characteristics of the project locations.
- e. Adequate surface drainage arrangement shall be made so that surface water does not enter the staircase escalator landing area and the pits shall be protected with tanking form of water proofing system.

### **4.3 SPECIFICATIONS AND STANDARDS OF PROJECT COMPONENTS/ FACILITIES**

#### **4.3.1 Lifts**

- i. Lifts of brand certified by ISO 9001, Kone/Otis/Johnson etc. or equivalent as approved by GMDA shall only be provided.
- ii. Each lift shall have minimum capacity of atleast 6 persons and shall be wide enough to accommodate wheel chair access.

#### **Technical Specifications – Lifts**

- Type of Lift: Traction lift
- Door Opening: Automatic
- Speed: 0.5 – 1 m/ sec
- Opening width: Minimum 900 mm.
- Materials: MS/SS/ with Polycarbonate support (or) MS with RCC support
- Protection: Multi-ray entrance protection system that detects passengers and objects in the path of closing doors within a fraction of second and instantly open the doors before they touch the passengers/ objects.
- Safety measures: Emergency automatic rescue device will be provided.
- Handrails: stainless steel in mirror finish
- Lift-guard: Battery operated automatic rescue device that takes over in the event of power failure to bring the lift to the nearest landing.

#### **4.3.1 Advertisement Space (FOB)**

- i. Advertisement shall only be placed at locations in accordance with Approved Designs submitted by Authorisee and approved by GMDA, preferably on the outer façade of the FOB facing the traffic below on both side.
- ii. The total aggregate advertisement space/area at any point of time shall not be more than 400 Sq Mts.
- iii. The provision for Outdoor Advertisement Panels can be on both sides of each skywalk and shall be front-lit, back-lit, digital, LED Video Wall or any kind of emerging out of home technology.
- iv. The advertisement panels mounted on the skywalk shall have height not more than 4.5 M and length not more than the length of skywalk.
- v. The Advertisement Panel's bottom the edge should be installed in such a way from the Skywalk Finished Floor Level (FFL) providing clear visibility and safety of pedestrians.
- vi. Advertisement can be placed on either side of the lift, Staircase and skywalks.

- vii. The advertisement panel shall not dominate the FOB and skywalk.
- viii. The Authorisee shall not display or exhibit any picture, poster, statue or other articles in any part of the premises that are repugnant to the general standards of morality. The Authorisee expressly agrees that the decision of the GMDA in this regard shall be conclusive and binding on the Authorisee.

#### **4.3.3 Lighting :**

Lighting shall be designed to provide adequate vision, comfort and safety. It shall be designed to provide uniform lighting of minimum throughout the facility with no dark patches or pockets and shall conform to IS 7537(Part 0/Sec 0):1974 of BIS.

#### **4.3.4 Pavement**

The Developer shall construct the foot path at the landings of the lifts of the existing FOBs with rigid pavement for heavy traffic conditions as per MORTH regulations with suitable drainage facilities.

#### **4.3.5 Dust Bins**

The dustbins placed at FOBs shall be of min. 450mm (l) x 450mm (b) x 750mm (h) dimensions with automatic lids (operable with legs) and painted and complete in all respects or as approved by GMDA.

#### **4.4 SERVICES: ELECTRICAL, DRAINAGE AND SOLID WASTE MANAGEMENT:**

- a. The planning, design and execution of electrical installation in all the project facilities shall be carried out in accordance with Part VIII Building Services (Section 2-Electric Installations, Section 5-Installation of Lifts, of National Building Code (NBC) of India prepared by BIS and as prevalent at the time of execution of the works, as the case may be.
- b. The planning, design, construction, and installation of drainage system in FOBs shall be in accordance with the Part IX (Section 1-Plumbing Services, Section 2-Plumbing and Sanitation as the case may be) of NBC of India prepared by BIS and as prevalent at the time of execution of the work.
- c. Solid Waste Collection and Disposal System shall be in place. Developer shall provided sufficient number of dustbins. FOB - minimum one each at the starting of staircases/ Lifts and one on each end/corner of skywalks.
- d. The escalator and general lighting in the FOB shall be provided with adequate power backup in case of emergencies/ power failure.

#### **4.5 ACCESS, ENTRY & EXIT FOB**

The access (entry/ exit) to the Lifts (FOB) shall open up on the footpath only (not on to the carriage way in any case).

#### **4.6 FIRE FIGHTING FACILITIES FOB**

The Developer shall provide the required fire fighting equipment and facilities including fire hydrants, fire proof doors etc. confirming to the relevant standards and the applicable rules and regulations. For Fire Protection and Fire Safety requirements, the Developer is required to follow the guidelines as provided in

National Fire Protection Authority (NFPA) regulations.

#### **4.7 PROVISIONS FOR DIFFERENTLY ABLED PERSONS *FOB***

The Developer shall provide all the necessary facilities to the entry/ exit, movement, of Persons with Different Abilities. The lift provided should wide enough to accommodate wheel chair access.

#### **4.8 SUPPORTING FACILITIES AND AMENITIES**

The developer shall provide all the necessary supporting facilities and amenities confirming to the development controls and meeting the relevant Indian and International standards.

#### **4.9 OTHER STANDARDS**

- a. The developer shall take such measures and exercise to protect the site during the course of the works as directed by and to the entire satisfaction of the Engineer-in charge.
- b. The Developer shall submit a programme supported with Bar Chart for construction of project/s in a phased manner so as to cause least inconvenience to the public. The construction and erection work shall be carried out during night hours/restricted hours keeping in view the safety of pedestrians/traffic. The Developer should give their complete program for different stages of execution including planning, designing, fabrication and erection etc.
- c. The developer shall provide all equipment and materials necessary to provide the Services
- d. The installed facility and equipment shall be inspected, checked and tested to verify that it is correct, complies with specification and has been installed in accordance with design drawings.
- e. The following checks shall be carried out before acceptance of various units and equipment:
  - i. Dimensions of all the civil structures as per the approved drawings
  - ii. Leakage tests for all civil structures as per relevant IS code
  - iii. Pipes and related accessories installed as per the approved drawings
  - iv. Alignment of equipment as per the approved drawings
  - v. All the electrical works to be tested for routine and type tests
  - vi. Installation of cables, earthing works as per relevant IS or international codes
  - vii. Performance testing (noise level, vibration etc) of all equipment on energisation as per relevant IS code
  - viii. I/O checks on signal to/ from all equipment, instrument, loop testing and verification of control functions and interlocks.
  - ix. Wherever any references to any Indian Standard Specifications and/ or IRC codes occur in the documents relating to this contract, the same shall be inclusive of all amendments issued there to or revision thereof if any, up to the date of receipt of tender.
  - x. The work shall be executed with highest degree of efficiency and all safety aspects shall be adopted as per International practices as directed by Engineer-in Charge.

### **5 MAINTENANCE AND PERFORMANCE STANDARDS**



## 5.1 GENERAL

During the period of operation, the Developer shall maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- a. Perform maintenance on a routine and periodic basis.
- b. Provide functional facilities that
  - i. Meet the requirements of FOBs
  - ii. Ensure the safety of the users; and
  - iii. Maintain a clean and hygienic environment at Project locations.
- c. Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- d. Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.
- e. Maintain regular and systematic records of all maintenance and operations activity at the Facilities

## 5.2 MAINTENANCE WORKS

- a. The Authorisee shall in consultation with GMDA evolve an Operation and Maintenance Manual.
- b. The Developer shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical and electrical works and equipment, services, facilities.
- c. Maintenance of all the electrical-mechanical equipments, machineries shall be as per “Original Equipment Manufacturers” (OEM).

## 5.3 EQUIPMENT MAINTENANCE

- a. Authorisee shall implement and maintain an auditable asset management system for all equipment devices within the Facility. As minimum a system shall record the following information on each device:
  - i. Name of equipment
  - ii. Manufacturer and/ or Supplier
  - iii. Serial number and other unique identifier
  - iv. Warranty and/ or guarantee information
  - v. Acquisition Date
  - vi. Cost of Equipment
  - vii. Installation Date
  - viii. Life of Equipment
  - ix. Recommended Replacement Date
  - x. Depreciation per year
  - xi. Servicing and/or calibration requirements and timetable
  - xii. Associated hazards and safety bulletins and notices
  - xiii. Current location
  - xiv. Current condition
  - xv. Repair and maintenance history
- b. Authorisee shall undertake planned and reactive maintenance of equipment to

ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

- c. The maintenance shall include:
  - i. Planned protective maintenance designed to keep unplanned breakdown and disruptions minimum
  - ii. Reactive maintenance providing rectification or arranging similar system to provide continuity of services
  - iii. Implement and maintain a planned replacement system of time/performance expired asset to maintain quality of performance and service availability

**5.4 PERFORMANCE STANDARDS: INTENT**

- a. The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- b. The obligations of the Operator in respect of Maintenance requirements shall include:
  - i. maintaining site environment so as to cause minimum disturbance to the natural environment;
  - ii. ensuring that the facilities are operational and rectification of the defects and deficiencies within the minimum time;
  - iii. ensuring that the fixed parameters provided in this RFP are abided by at any time during the Authorisation period
- c. Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency, or deterioration in the Project poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimising such danger.

**5.5 MAINTENANCE PERFORMANCE STANDARDS**

- a. The Authorisee shall maintain the Project Facility in good and usable condition throughout the Authorisation Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- b. The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the facility during the Operations Period, so that the facility is maintained in a manner that at all times it complies with the specifications and standards and at the time of divestment of rights and interests by the Authorisee in terms of the Concession Agreement in sound, durable and functional condition. In order to maintain the quality and operational standards of high quality, the periodic maintenance/ renewal activities are proposed for the Project in *Table below*.

**Table : Periodic Maintenance/ Renewal Activities**

SN	Periodic Renewal Activities	Time Limit for renewal
1	Repainting of FOB structure, signage delineators, markings etc.	Minimum once in 3 years

2	Resurfacing of flooring material, treads of staircase	Routine repairs every year. In case the flooring material is of rigid type, no periodic renewal would be required except cleaning & filling of Joints
3	Mechanical Equipment	Minimum once in six months, as per Manufacturer's maintenance instruction manual
4	Electrical Equipment	Minimum once in a year, as per Manufacturer's maintenance instruction manual
5	Fire Fighting System	As per Manufacture operation and maintenance instruction manual
6	Lighting	Periodic check up and replacement as and when needed
7	Cleaning of FOB and garbage Disposal	Daily

#### 5.6 PERFORMANCE STANDARDS FOR OPERATION

In order to maintain quality standards in the operation of the Project, the following performance standards for operation shall be adhered to,

*Table: Performance Standards for Operation*

SN	Parameters	Performance Indicators
1	Foot Over Bridge with staircases	To remain operational 24 hours a day throughout the year
2	Lifts	To remain operational from 6.00 am to 10.00 pm every day throughout the year or as per GMDA directions from time to time
3	Electricity Supply for FOB, kiosks, Advertisement, etc	To remain operational 24 hours a day throughout the year
4	Standby Diesel Generator Sets or Solar/ Renewable Energy	To enable power supply backup to the Project facilities any time in case of disruption or breakdown in power supply
	Security services at FOB	To remain Operational 24 hour a day throughout the year

#### 5.0 CLEARANCES AND SANCTIONS

Developer shall be responsible for getting all the required clearances and sanctions for the proposed project from various agencies as may be required. However, GMDA shall provide best possible support to the developer in obtaining the required clearances.

### **SECTION III**

#### **FORMATS FOR BID SUBMISSION**

## Annexure A 1

## COVERING LETTER

{In Letterhead of the Applicant (in case of sole applicant) or the Lead Consortium Member}

Dated: .....

**To,  
The Chief Executive Officer,  
Guwahati Metropolitan Development Authority.  
Bhangagarh : Guwahati-5. Assam. India**

**Sub: Submission of RFP for “Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Finance, Operate and Transfer (DBFOT) basis.**

Dear Sir/ Madam:

1. We are submitting this Bid (Proposal) on our own (**or**) We are submitting this Bid (Proposal) as the Lead Member of a Consortium consisting of the following members, for and on behalf of the Consortium

Sl.	Names of Consortium Members	Address
1	..... (Lead Member)	
2	..... (Member)	
3	..... (Member)	

As a Lead Member, we understand the obligations of the Authorise to implement the Project.

2. Having visited the site and examined the RFP Documents, for the execution of the Authorisation Agreement for the captioned Project, we the undersigned offer to design, finance, construct, market, operate & maintain the whole of the foot over bridges for the Authorisation Period in conformity with the RFP.
3. This Bid and your written acceptance of it shall form part of the Project Agreements to be signed between the Authorisee and GMDA. If a Bidder is nominated as Preferred Bidder, we understand that it is on the basis of the technical, financial & organizational capabilities and experience of the Bidder taken together. We understand that the basis for our qualification will be the complete Bid documents submitted along with this letter, and that any circumstance affecting our continued eligibility as per RFP, or any circumstance which would lead or have lead to our disqualification, shall result in our disqualification under this Bidding process.
4. We agree that
  - (a) if we fail to meet the Technical specifications and/ or the Performance Standards according to the conditions/ stipulations of the RFP/ Authorisation Agreement,

**OR**

  - (b) If we fail to offer provide required facilities to GMDA or its Authorised Representative for carrying out the inspection of works, operations and

performance, then GMDA or its representative shall be at liberty to take action in accordance with the RFP/ Authorisation Agreement.

5. We undertake, if our Bid is accepted, we will complete the Project, commence operations and maintain the project facilities as per the RFP/ Authorisation Agreement.
6. We agree to abide by this Bid for a period of **120 (one hundred twenty) days** from this bid submission Due Date fixed and it shall remain binding upon us and may be accepted at any time before the expiry of that period.
7. In the event of our Bid being accepted, we agree to enter into a formal Authorisation Agreement with GMDA as per the RFP.
8. If our Bid is accepted, we agree to furnish an irrevocable Demand Draft / Bank Guarantee towards performance security within 15 days of LoI and as pre-condition for signing of Authorisation Agreement as per the RFP.
9. We agree that if we fail to fulfil any of the conditions mentioned at above, GMDA shall have the right to forfeit the Bid Security being furnished by us along with this Bid.
10. Notwithstanding any qualifications of 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 as under
  - Minimum Development Obligations as indicated in the RFP;
  - Development Controls or any other statutory authorities like GMC etc.
  - The Technical specifications, the performance standards etc as stipulated in the RFP;
  - Any other regulation as applicable.
11. We understand that GMDA is not bound to accept any or all Bids it may receive.
12. We declare that we have disclosed all material information, facts and circumstances, which would be relevant to and have a bearing on the evaluation of our Bid and selection as Authorise.
13. We do, also, certify that all the statements made and/or any information provided in our proposal are true and correct and complete in all aspects.
14. We declare that in the event that GMDA discovers anything contrary to our above declarations, it is empowered to disqualify us and our Bid from further participation in the Bid evaluation process and forfeit our Bid Security.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017

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

\_\_\_\_\_  
(Name of the person)

\_\_\_\_\_  
*(In the capacity of)*  
Company Seal

\_\_\_\_\_  
*(Name of firm)*  
Duly authorized to sign Proposal for and on behalf of *(Fill in block capitals)*

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

**Annexure A2**

**Details of Bidder**

**[On the letter head of the Bidding Company/Members of Consortium]**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/or commencement of business (Please provide a true copy of the incorporation certificate):
  
2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in [this/these Project(s)]:
  
3. Details of individual(s) who will serve as the point of contact/communication
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone number:
  - (f) E-Mail Address:
  - (g) Fax number:
  
4. Particulars of the authorized signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone number:
  - (e) Fax number:
  
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members.



Appendix A3-A

**Power of Attorney for signing of Bid**  
(To be executed on stamp paper of appropriate value)

Know all persons by these presents, [I ..... (name of the company) incorporated under the laws of India and having its registered office at [ ] “**Company**”] do hereby irrevocably constitute, nominate, appoint and authorize Mr/Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid for Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis pursuant to the RFP dated [ ] (“RFP”) issued by the Guwahati Metropolitan Development Authority (the “**GMDA**”) and for our selection as Successful Bidder including but not limited to signing and submission of all Bids and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to GMDA, representing us in all matters before GMDA, signing and execution of all contracts including the Authorisation Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with GMDA in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Authorisation Agreement with the Guwahati Metropolitan Development Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deed, matters and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us. Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2.....

For .....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

## Appendix A3-B

**Format For Power of Attorney for Lead Member of Consortium**  
(On a Non-Judicial Stamp Paper of Rs. 100 duly attested by notary public)

**POWER OF ATTORNEY**

Whereas the Guwahati Metropolitan Development Authority (hereinafter referred to as "GMDA"), has invited RFP from interested parties for the Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format" on Design, Build, Finance, Operate and Transfer (DBFOT) basis ("the Project").

Whereas, the members of the Consortium are interested in submission of Proposal and if qualified, in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Bid Document and other connected documents in respect of the Project, and

Whereas, it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's 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 Application/ Proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with GMDA, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Authorisation Agreement is entered into with GMDA.

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 \_\_\_\_\_ Day of \_\_\_\_\_ 201\_\_.

\_\_\_\_\_  
(Executants)

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

**Note:**

- a. 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 submitted under common seal affixed in accordance with the required procedure.
- b. Also, the executant(s) should submit for verification the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this power of attorney for the designation of power hereunder on behalf of the Applicant.

**Format For  
Consortium Agreement  
(In case the applicant Bidder being a Consortium)  
(on Rs.100 Non Judicial Stamp Paper)**

**THIS AGREEMENT** is executed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 between

1) \_\_\_\_\_ a Company registered under the Companies Act 1956 and having its registered Office at \_\_\_\_\_ (hereinafter referred to as “the Party of the First Part”) And

2) \_\_\_\_\_ also a Company registered under the Companies Act 1956 and having its registered office at \_\_\_\_\_ (hereinafter referred to as “the Party of the Second Part”) and

**WHEREAS**

- I. All the Parties of the First and Second part are entitled to enter into joint venture/ partnership with any person or persons including a company for carrying on the business authorised by their respective Memorandum of Association.
- II. The Parties hereto propose to participate as a Consortium for the Bid based on the Request for Proposal (RFP) from Guwahati Metropolitan Development Authority for Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis (“the Bid”) by pooling together their resources and expertise.
- III. If the Parties hereto succeed in the Bid, they propose to enter into Memorandum of Agreement (MoA) to undertake financing, designing, construction, commissioning, marketing, operation and management of the Bid.
- IV. The Parties hereto are desirous of recording the broad terms of their understanding as set out here below NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-
  1. That the Parties hereto agree to carry on the business on the broad terms and conditions herein through an MoA to be executed by them.
  2. That the business of the Consortium will be that of Developing, Financing, Constructing, Operating, Managing and Transferring the Project.
  3. That in the event the Parties hereto succeed in the Bid for the Project, the Consortium will execute the Project in accordance with terms and conditions of the RFP documents and will execute the Authorisation Agreement and all the documents/ writings/ papers with the GMDA and construct and commission the project in accordance with the plans/designs sanctioned by the appropriate /concerned authorities.
  4. The roles and responsibilities of the Members of the Consortium shall be as follows:

(a) The Party of the First Part (Lead Member) shall be responsible for:

- (i)
- (ii)
- (iii)

(b) The Party of the Second Part shall be responsible for:

- (i)
- (ii)
- (iii)

5. Each of the Parties shall be liable and responsible jointly and severally for

- (i) Compliance of all statutory requirements as may be applicable in respect of the Project.
- (ii) Contribute to the joint venture all of its management and business experience, financial resources, expertise, competence and acumen for the success of the Project.

*(Note: Role & responsibility of all members of the Consortium shall be included in the above para)*

6. That the responsibility of all the members of the Consortium shall be joint and several at every stage of implementation of the Project.

7. That in case the project is awarded to the Consortium, the Consortium will carry out all the responsibilities as the Authorisee and will comply with all the terms and conditions of the Authorisation Agreement as would be entered with the GMDA (Grantor).

8. That this Agreement shall remain in full force and effective coterminous with the Authorisation Agreement.

9. That nothing in this Agreement shall be construed to prevent or disable any Party hereto to carry on any business, which is permitted under the governing law, on their own in terms of their respective Memorandum of Association.

10. **Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the Authorisation Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

11. **Miscellaneous**

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

*(Note: The above provisions are mandatory; the Consortium may add any other provision, if required)*

IN WITNESS WHERE OF the parties have put their respective hands the day and year first hereinabove written.

Signed and delivered for and on behalf )  
Of the within named M/s..... )  
... by its Director, ..... )  
...duly authorised in the presence of )  
..... )

Signed and delivered for and on behalf )  
Of the within named M/s..... )  
...by its Director, ..... )  
\_\_\_\_\_ )  
duly authorised in the presence of )  
..... )

Signed and delivered for and on behalf )  
Of the within named M/s..... )  
...by its Director, ..... )  
\_\_\_\_\_ )  
duly authorised in the presence of )  
..... )

Note:

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

**Annexure A5**

**Anti-Collusion Certificate**

(To be executed on stamp paper of appropriate value)

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act, 1988" and its subsequent amendments thereof.

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

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

Dated this .....Day of ....., 20\_\_

.....  
(Name of the Bidder)

.....  
(Signature of the Bidder / Authorised Person)

.....  
(Name of the Authorised Person)

**Annexure A6**

**PROJECT UNDERTAKING**

(On the Letter Head of the Bidder or Lead Member in case of a Consortium)

**Date ----**

**To,  
The Chief Executive Officer,  
Guwahati Metropolitan Development Authority  
Bhangagarh: Guwahati-5. Assam. India**

**Sub: Submission of RFP for “Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis.**

We have read and understood the Request for Proposal (RFP) document in respect of the captioned project provided to us by GMDA.

We hereby agree and undertake as under:

Notwithstanding any qualifications of 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 Agreement, a draft of which also forms a part of the RFP document provided to us.

We are also not barred by GMDA, Government of India, Government of Assam, or any other state government or any of their agencies, departments from participating in similar projects.

Dated this ..... Day of ..... 201...

**Name of the Bidder  
Signature of the Authorized Person  
Name of the Authorized Person**

## Annexure A-7

**Details of Advertisement Experience (if any)**  
**[On the letter head of the Bidding Company/Members of Consortium]**

Item	Details
Number of Years in business of Advertisement	
Incorporation Date	
Nature of Advertisement handled in the last three years(Project)	
Nature of the Advertisement involving management of hoardings/ bill boards etc. and details	
Client details	
Location	
Period (year)	

**Instructions:**

- i. A separate sheet should be filled for each Project.
- ii. Particulars such as name, address and contact details of owner/client should be provided.
- iii. Agreement copies or Certificate from the client must be furnished.

***All the documentary evidence submitted by the Bidder(s) shall be to the satisfaction of GMDA. Decision of GMDA in accepting or rejecting such documentary evidence as submitted by the Bidder(s) is final and binding on the Bidder(s).***



**Annexure A-8**

**Financial Capacity of the Bidder**

Applicant type\$	Turnover (in INR)			Net worth (in INR)
	2013-14	2014-15	2015-16	
Bidding Company				
Consortium Member 1				

\$ A Bidder consisting of a single entity should fill in details as per the row titled Bidding Company and ignore the rows titled Consortium Members. In case of a Consortium, row titled Bidding Company may be ignored.

€The Bidder should provide details of its own Financial Capacity

(The Bidder/ its constituent Consortium Members to attach audited annual report, balance sheets, profit & loss account and audit reports certified by CA)

**Format For  
LETTER OF UNDERTAKING FOR TECHNICAL BID**

[On the Letter head of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date:

**To,  
The Chief Executive Officer,  
Guwahati Metropolitan Development Authority  
Bhangagarh : Guwahati-5. Assam India**

**Sub: Submission of RFP for “Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Finance, Operate and Transfer (DBFOT) basis.**

Sir/ Madam,

As a part of the Bid for “Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis we hereby agree to develop and operate the Project as per the requirements stipulated in the RFP. We hereby undertake that if the Project is awarded to us, we will meet requirements as specified hereunder and hereby give our compliance for the same:

SN	Components	Details
1	Minimum Development Obligations	As specified in Section II (Development Control & Technical Specifications) of RFP
2	Development Guidelines	As per applicable Development Control Regulations (DCR) of the Statuary/Competent Authorities
3	Implementation Plan	The Minimum Development Obligations as specified in Section II of RFP, shall be completed within stipulated time.
4	Technical Specifications	As per the Technical specifications provided in the Section II, of this RFP, other Indian/ international Standards
5	Performance Standard	As per the Performance Standards specified in Section II, of the RFP and as per the good industry practices
6	Applicable Permits	Obtain and maintain at own cost all Applicable Permits, inconformity with the Applicable Laws and be in Compliance therewith.

We hereby assure GMDA and guarantee that in future, from time to time whenever we are required to undertake or follow any specific guideline / law, we shall do the needful as required to ensure that the project and the Authorisee comply with the legal requirements.

Yours faithfully,

(Signature of Authorised Signatory)  
(Name, Title, Address, Date)

**SECTION –IV**

**DRAFT AUTHORISATION AGREEMENT**

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## AUTHORISATION AGREEMENT

This agreement is made and executed on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, at

**BETWEEN**

**Guwahati Metropolitan Development Authority (GMDA)** having its office at Statefed Building Bhangagarh, Guwahati - 781005, Assam, India acting through its Chief Executive Officer hereinafter referred to as the **“Grantor”** (which expression unless repugnant to context or meaning thereof shall include its successors, affiliates and assigns) of the **First Part.**

**AND**

**M/s .....**, a company incorporated under the Companies Act, 1956, having its registered office at -----, India, represented by ----- hereinafter referred to as the **"Authorisee"** (which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **SECOND PART**, Each singly a **“Party”** and all collectively the **“Parties”**.

**WHEREAS**

- A. The first party, has considered it necessary to provide facilities to pedestrians such as safe crossings on busy roads under Public Private Partnership Mode. **Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format** on Design, Build, Finance, Operate and Transfer (DBFOT) basis and the project facilities considered for development under this project.
- B. GMDA had invited Request for Proposal (Proposals) vide tender notice no. \_\_\_\_\_ dated \_\_\_\_\_ and has invited bids through competitive bidding for selection of the Preferred Bidder interested in implementing the Project on the commercial format.
- C. Following a process of competitive bidding, after evaluating the proposals received by the GMDA in response to its RFP dated \_\_\_\_, the Grantor accepted the Proposals submitted by....., the Preferred Bidder, on behalf of (Name of the Consortium)....., for developing and implementing the Project and communicated its acceptance to the Preferred Bidder vide Letter of Intent, dated \_\_\_\_ (the “Letter of Intent” or “LOI” attached hereto as Appendix I).
- D. The Preferred Bidder, is holding a Power of Attorney from (Name of the Consortium or Individual Members) (the “Power of Attorney” attached hereto as Appendix II) and is duly authorized to execute this Agreement on behalf of Name of the Consortium or Individual Members) ..... The Preferred Bidder has incorporated the Authorisee under the Companies Act, 1956, as a Special Purpose Company to implement the Project.

- E. Following the issuance of the LOI, the Preferred Bidder/ Authorisee in accordance with the terms and conditions as specified in the RFP ...the Preferred Bidder/Authorisee shall pay quoted Authorisation amount to GMDA in the form of Demand Draft in favour of Chief Executive Officer, GMDA.
- F. In light of the compliance by the Authorisee of the pre-conditions to the execution of the Authorisation Agreement, Grantor has agreed to enter into this Authorisation Agreement vesting the rights for the implementation of the Project with the Authorisee on the terms, conditions and covenants hereinafter set forth in this Agreement.
- G. The Preferred Bidder has undertaken to ensure that the Authorisee shall duly discharge its obligations under this Agreement and implement the Project and is joined in and executing this Agreement as a Confirming Party to the arrangement envisaged and detailed herein under and agrees to undertake and comply with the terms and conditions hereof as binding terms.

## NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

### ARTICLE 1- DEFINITIONS AND INTERPRETATION

#### Section 1.1 Definitions

“**Advertisement Charges**” or “**Advertisement Tax**” shall mean the registration fee and applicable charges or taxes as notified by the Government Agency and revised from time to time which payable by authorisee for the grant of license to hoist advertisement in the project.

“**Advertisement space**” means the area earmarked by Grantor for putting up Advertisement panels by the Authorisee.

“**Agreement**” means this Authorisation Agreement executed between GMDA and the Authorisee.

“**Applicable Laws**” means all laws, promulgated or brought into force and effect by the Government of Assam or the Government of India including rules and regulations made there under, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

“**Applicable Permits**” means all sanctions, approvals, clearances, permits, authorisations, consents and No objection Certificates under or pursuant to applicable Laws, required to be obtained and maintained by the Authorisee for maintenance of the Facility in accordance with this Agreement.

“**Authorisation**” means the Revenue share in percentage ....., quoted by the Authorisee in the Commercial proposal of the Bid and accepted by the Grantor that shall be paid by the Authorisee to the Grantor for the Authorisation Period in accordance with the provisions hereof.

“**Authorisation Period**” or the “**Concession Period**” shall have the meaning specified in Section III, Article-2;

“**Authorisee**” means M/s \_\_\_ and shall include its successors and permitted assigns;

“**Compliance Date**” shall have the meaning set forth in Section 3.3 (j), upon which the conditions precedent to this Agreement have been fulfilled, being the date upon which this Agreement becomes unconditional and effective;

“**Construction Commencement Date**” shall have the meaning specified in Section 6.2 (g);

“**Construction Period**” shall mean the period from the date of signing of this Agreement till the Commercial Operation date.

“**Commercial Operation Date (COD)**” shall have the meaning specified in Section 6.3 (i);

“**Default/s**” means event/s of default as described under Article 14 of this Agreement.

“**Development Controls and Technical Specifications**” shall mean entire content of the Section II of the RFP including the specifications and standards mentioned.

“**Evaluation Committee**” means the Committee that may be constituted by the Grantor for the bid evaluation and approval of the architectural design submitted by the Authorisee.

“**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 to payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Facility, physical encumbrances and encroachments on the Facility Project Location.

“**Facility**” shall consist of, unless the context otherwise requires, the details of the Project Location, FOB, Amenities and Services and others as approved by GMDA and other competent authorities and also include such other fixtures, fittings or any other additions, the Authorisee would provide or install/fix to maintain the Facility during the subsistence of this Agreement.

“**Facility Assets**” means all moveable and immovable assets relating to and forming part of the Facility as on the date of completion of construction or as may be added or replaced or renovated or modernized by the Authorisee from time to time during the tenure of the Agreement.

“**Force Majeure Events**” Shall have meaning as described under Article 13 of this agreement and as per RFP.

“**Government Agency**” means state government or governmental department, agency, authority, instrumentality, central, state, or local, having jurisdiction over the Licensee, the Facility Project Location, Facility Assets or any portion thereof, or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Agreement.

“**Maintenance**” means upkeep of the facility as per best industry standards and practices for use by the public without hindrance and includes repairs, replacements, renovation or modernization to keep the facility in working and usable condition.

**“Material Adverse Effect”** means material adverse effect on (a) the ability of the any of the Party to this Agreement to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

**“Operation Period”** means the period from the Commercial Operation Date till the issuance of Vesting Certificate by the Grantor.

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

**“Person”** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or government agency or any other legal entity.

**“Project” or Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format on Design, Build, Finance, Operate and Transfer (DBFOT) basis** means, subject to the provisions of the Authorisation Agreement, (i) designing, financing, construction, implementation, completion, commissioning, marketing, management, operation and maintenance and commercial use of the Project Facilities at each of the Project Locations, execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Authorisee during the Authorisation Period; (ii) the demanding, charging, collecting, retaining and appropriating and revision of advertisement tariffs by the Authorisee at market driven rates and (iii) the transfer of the Project/Project Facilities by the Authorisee to GMDA or its nominated agency at the end of the Authorisation Period by efflux of time or prior termination. For avoidance of doubt it is clarified that Project as enumerated above shall be construed as a Project for the Project facilities at the Project Location.

**“Project Facilities”** The Project Facilities shall comprise and consist of Lifts connecting the ground and the sky walk as specified for each FOB along with utilities like dust bins, signage, pavements, barricading and power backup facilities as specified in the RFP.

**“Project Assets”** means all tangible and intangible assets relating to the Project including, but not limited to, (a) rights over the Project Location in the form of right-of-way or otherwise, (b) tangible assets of the Project Facilities, foundation, constructions, lifts, additions, alterations or improvements etc. thereof landscape structures, pavement and walkways, drainage facilities, sign boards, milestones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, equipment, technology at the Project Location/relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, Tariff etc.; (d) the rights of the Developer/Authorisee under the Project Contracts, (e) the Applicable Permits relating to the Project and (f) insurance;

**“Project Completion”** shall have the meaning ascribed to it under Section 6.3(j) of this Agreement.



**“Project Location(s)”** means the location(s) allotted for development of the Project under this Agreement and enumerated at Appendix II to this Agreement.

**“RFP”** means the Request for Proposal Document.

**“Relevant Authorities”** means unless mentioned in this Agreement, means generally any governmental, quasi-governmental, regulatory or administrative authority, agency, department or entity.

**“Transfer Date”** means the date immediately following the date of expiry of Authorisation Period/this Agreement/the Authorisation, including extension thereto or earlier termination thereof in accordance with the provisions of this Agreement.

**“Termination Date”** means the date on which the termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of the Agreement.

**“Termination Notice”** means a communication by Registered Post in writing by a Party to the other Party regarding termination in accordance with the applicable provisions of this Agreement.

**“Transaction Documents”** means collectively the Project Contracts and the Financing Documents;

### **Section 1.2 Interpretations**

In this Agreement, unless the context otherwise requires:

- (a) Appendices 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.
- (b) references to “construction” include, unless the context otherwise requires, investigation, design, development of Project Location, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” shall be construed accordingly;
- (c) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, authorisation, proposal, communication, information or report or determination by any Party and/or the Independent Engineer/Consultant/Consultant/ Expert, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorisation, proposal, communication, information or report or determination shall be in writing under the hand of the duly authorised representative of such Party and/or the Independent Engineer/Consultant/Expert in this behalf;
- (d) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

### Section 1.3 Priority of Documents

The documents forming part of the bidding process leading to this Agreement shall be relied upon and interpreted in the following descending order of priority:

- (a) This Agreement
- (b) The Appendices to the Agreement
- (c) The LOI issued to the Authorisee
- (d) The written clarifications issued to the bidders at RFP stage
- (e) Written addenda to the RFP
- (f) The RFP

## ARTICLE 2 – AUTHORISATION

### Section 2.1 - Grant of Authorisation

- (a) Subject to and in accordance with the terms and conditions set forth in this Agreement, the Grantor hereby grants to the Authorisee, and the Authorisee hereby accepts the exclusive right, authority and Authorisation during the Authorisation Period to undertake, the development, design, engineering, financing, procurement, construction, completion, commissioning, implementation, marketing, management, administration and operation and maintenance of the Project at the Project Locations enumerated at Appendix II, on the commercial format, and exercise and/or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement (collectively the “**Authorisation**”).
- (b) The Authorisation granted herein includes, subject to the provisions hereof, the exclusive right of the Authorisee to:
  - i. hold, occupy, enter upon and use the Project Location(s) for implementing the Project, establishing the facilities and executing the Works and to make at its cost and expense such development, construction and improvements therein or thereon as may be necessary or appropriate to implement the Project subject to and in accordance with the provisions of this Agreement;
  - ii. letting out spaces at the Project Location and/or Project facilities for advertisement’s through licensing, franchising, management service, sub-contracting or other suitable arrangements on mutually agreed market driven conditions (“Contractual Arrangements”) with any Persons of its choice;
  - iii. determine, revise, charge, demand, collect, recover retain and appropriate, the Tariff at market driven rates from Advertisement and persons desirous of utilizing the space at the project facilities for the display of advertisements; and
  - iv. Carry out such other activities incidental to the foregoing or proper or desirable for the safe, efficient and economic implementation and operations of the Project.

- (c) The Authorisee shall, on the Date of issuance of Vesting Certificate by the Grantor, transfer and hand over the Project and the Project Assets to the Grantor or its nominated agency in accordance with the provisions hereof.
- (d) The Authorisee shall not part with or create any Encumbrances on the whole or any part of the Project Location save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Authorisee to appoint Contractors, to enter into Contractual Arrangements and to assign its rights here under and create a security interest in favour of the Lenders in accordance with the provisions of this Agreement.

### **Section 2.2 - Authorisation Period**

The Authorisation Period is 20 Years that shall commence from the date of Signing of the Agreement. From such date till the end of authorisation period of 20 years or the earlier termination or any extension of this Agreement in accordance with the terms and conditions hereof, during which the Authorisee is authorized to implement the Project and make commercial use thereof in accordance with the provision of this Agreement. For the avoidance of doubt, the Authorisation Period shall include the period of construction.

## **ARTICLE 3 - CONDITIONS PRECEDENT**

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions precedent relating to the other Party (the “**Conditions Precedent**”).

### **Section 3.1 - Conditions Precedent for Grantor**

The Grantor shall have:

- (a) Provided to the Authorisee, permission/license to undertake the Project in the Project Location/s through an ‘Order’ in accordance with the terms of this Agreement;
- (b) granted advertisement rights to the Authorisee for generating revenue for the agreed Authorisationperiod; and
- (c) made necessary arrangements (in co-ordination with the line departments) for procuring necessary approvals from the Government of Assam (GoA) departments, agencies for administrative sanctions to enable the Authorisee to commence the Implementation of the Project.

### **Section 3.2 - Conditions Precedent for Authorisee**

The Authorisee shall have:

- (d) made all the applications at its cost and procured the Technical Alliances, Applicable Permits required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied

in full and such Applicable Permits are in full force and effect and the Authorisee is in compliance with the conditions of grant thereof and they are valid and effective;

- (e) Submitted concepts along with three dimensional (3D) views and the architectural/ G.A. (General Arrangement) drawings of the finalized concept - all within one month of agreement signing.
- (f) provided the Grantor notarised true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Authorisee;
- (g) achieved Financial Closure and provided notarised true copies of the Financing Documents to the Grantor along with soft copies;
- (h) confirmed in writing that all the representations and warranties of the Preferred Bidder/Authorisee set forth in the Proposal and forming part of this Agreement are true and correct as on the date of execution of this Agreement and the Compliance Date

*Provided that upon request in writing by the Authorisee, the Grantor may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.2.*

### **Section 3.3 - Obligation to Satisfy Conditions Precedent**

- (i) Each Party shall make all reasonable endeavors at its respective cost and expense to comply in full with the Conditions Precedent relating to it **within a period of Three (3) months** from the date of execution of this Agreement or any extension agreed to between the Parties.
- (j) The later of the date within such days when the Grantor and the Authorisee both fulfill their Conditions Precedent (unless Grantor waives the same for the Authorisee) shall be the date from which the obligations of the Parties hereunder shall commence (the “**Compliance Date**”).

### **Section 3.4 - Non-fulfillment of Conditions Precedent**

- (k) In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Grantor has not waived, fully or partially, such conditions relating to the Authorisee, 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 GMDA shall not be liable in any manner whatsoever to the Authorisee or Persons claiming through or under it.
- (l) In the event that possession of the Project Location has been delivered to the Authorisee prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement under this Section 3.4, the Project Location shall immediately revert to the Grantor, free and clear from any encumbrances and along with all Easement Rights, irrespective of any outstanding mutual claims between the Parties.

- (m) In the event this Agreement is terminated due to non-fulfillment of the Authorisee's Conditions Precedent and the same is not due to Grantor default, Grantor shall forfeit and retain the Authorize amount as damages.
- (n) In the event this Agreement is terminated due to non fulfillment of the Grantor's Conditions Precedent, the Grantor shall upon such termination return/refund in full the Construction Performance Security to the Authorisee, unless the Grantor's failure to fulfill its Conditions Precedent is not a result of the Authorisee's default, in which case the Grantor shall forfeit the Construction Performance Security as damages.
- (o) Instead of this Agreement terminating as provided in this Section 3.4, the Parties may by mutual agreement extend the time for three more months or more for fulfilling the Conditions Precedent. In such case, the Grantor shall compensate the developer by extending the Authorisation period accordingly.

## **ARTICLE 4 - PROJECT LOCATION(S)**

### **Section 4.1 – Possession of Project Location**

- i. The signing of this agreement and fulfilment of conditions precedent by both the parties is deemed to provide the authorisee with access to the Project Location(s). The Project Locations for the proposed Projects are at the key locations as enumerated at Appendix II.
- ii. The Parties shall, within 15 (fifteen) days of the Grantor's notice in this behalf to the Authorisee prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all existing FOB's, structure, land and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Authorisee in such joint inspection shall be mandatory. The Authorisee shall carry out at its cost a due diligence of all encumbrances at, on or under the project location and notify the same to the Grantor, which shall take prompt action for removing the same.
- iii. The Grantor shall bear all the costs of making available the Project Location(s) to the Authorisee and be liable to remove encroachments if any at its cost, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Authorisee shall not be liable in this behalf.
- iv. In consideration of implementation of the Project by the Authorisee and the payment herein reserved and of other covenants on the part of the Authorisee, the Grantor shall, upon signing of this agreement, be deemed to have handed and delivered to the Authorisee on an "as is where is basis" the possession of all the existing FOB's and rights comprising the location, free from Encumbrances, and together with the Easement Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, for a period that shall be co-terminus with the Authorisation Period.

**Section 4.2 - Use of Project Location**

- v. The Authorisee shall not without prior written consent or approval of the Grantor, use the Project Location for any purpose other than for the purposes of implementing the Project and commercial use of the Project Location in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Grantor. The Authorisee acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.
- vi. The Authorisee shall maintain vigil over the Project Location during the Authorisation Period to prevent encroachments or occupation of the Project Location and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Grantor thereof.

**Section 4.3 - Information about Project Location**

- vii. The information about the Project Location(s) is provided by the Grantor to the Authorisee in good faith and with due regard to the matters for which such information is required by the Authorisee. The Authorisee acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Project Location, and accepts full responsibility for its condition; and agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Project Location (or part thereof) or for any other reason pertaining to the Project Location(s).

**ARTICLE 5 - OBLIGATION OF PARTIES****Section 5.1 - Obligations of the Authorisee**

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Authorisee shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the Authorisation Period with the following obligations:

- (a) The Authorisee shall design, plan, develop, finance, construct, market, administer, manage and operate and maintain the Project/Project Facilities, including without limitation the necessary infrastructure, services and facilities, during the Authorisation Period strictly in accordance with the provisions of this Agreement, Development, Controls, Specifications and Standards enumerated at Section-II of the RFP, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Authorisee shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (b) The authorisee shall arrange for the shifting of all utilities/ infrastructure including power lines, telephone lines, cables, that are present within the proposed project location and if they are intervening with the project construction only. Such shifting shall be done in coordination with and approval/ clearance from the concerned departments/ authorities and shall pay the applicable fees and charges to the concerned authorities for the purpose of shifting. The shifting shall be the responsibility of the authorisee and Grantor shall extend its best support/ facilitation to the authorisee in achieving the same.



- (c) In case of any delay in shifting of the utilities due to which the project could not be completed and provided that such delay is not due to any default or negligence on the part of the Authorisee or Persons claiming through or under it, Grantor shall commensurate the loss of time period by extending the Authorisation Period proportionately or by adjusting the same in the Authorisation Premium payments to be made by the authorisee.
- (d) In implementing the Project, the Authorisee shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including construction laws, traffic safety regulation, guidelines and the terms of Applicable Permits and the Authorisee shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Grantor from and against all liabilities and costs in this behalf.
- (e) The Authorisee shall keep open the project facilities including Lifts of FOBs in working condition to the public free of cost within Eight Months from the Compliance Date and till the end of the Authorisation period. The project facilities shall be open 24X7 round the year. However, Lifts shall be functioning for a minimum time period from 6.00 am to 10.00 pm on a daily basis round the year.
- i. If the facilities are not opened to public free of cost as per the above timings, the Grantor upon verifying and confirming the same shall issue a notice to the authorisee to pay a penalty of minimum Rs. 10,000 per day computed for number of days of such default. If the authorisee does not make the payment and/or does not rectify and operate the facilities as per the standard timings as above, the performance security shall be forfeited (partly/ whole) without any prior notice. The authorisee shall top up the said guarantee to the extent forfeited within fifteen days of Grantor's notice. In case the authorisee does not fulfill the above, it will be treated as event of default as per clause 14.1 a (i) and GMDA shall have right to terminate the agreement.
  - ii. In case of non performance of any of the project facilities – not opened to public use for a period more than seven days i.e. non functioning of Lifts no access to FOB sky walk, staircases, etc., then the developer shall immediately remove the advertisement on the project facilities and pay penalty of Rs. 10,000/- per day for the period of non performance of any of the Minimum Development Obligations. In case of non adherence to the above, the performance security shall be forfeited (partly/ whole) without any prior notice. The authorisee shall top up the said guarantee to the extent forfeited within fifteen days of Grantor's notice. If the project facilities are not rectified even after a period of one month, it will be treated as event of default as per clause 14.1 a (i) and GMDA shall have right to terminate the agreement.
- (f) The Authorisee shall obtain and maintain at its cost all Applicable Permits, (including all environmental permits), from the State /Central Government or their Agencies, as may be required for implementation of this Project and running the facility. The Authorisee shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Authorisee to perform its obligations hereunder.

- (g) The Authorisee shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. payable under Applicable Laws arising from the respective terms and conditions of employment of all labor and personnel employed by the Authorisee, its Contractors, agents and representatives on or in connection with the Works or the Project Location under or through whatever legal relationship;
- (h) The Authorisee shall make efforts to maintain harmony and good industrial relations among the labor and personnel employed in connection with the performance of the Authorisee's obligations under this Agreement, whether by himself or through the sub-contractors, and be the principal employer in respect of such labor and personnel. The Authorisee shall be solely responsible and liable for compliance with all Applicable Laws, including labor and local laws, pertaining to the employment of labor, staff and personnel by it and its Contractors for implementing the Project and the Grantor shall not be liable in any manner whatsoever in respect of such employees and their employment.
- (i) The Authorisee may sub-contract at its cost and risk to Contractors possessing the required skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement, fabrication and construction of civil / mechanical / electrical engineering structures / equipment, and / or operation and maintenance of the Project or any part thereof provided the Authorisee shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Grantor, of the Works by the Contractors. The Authorisee shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement are incorporated in the terms and conditions under which such Contractor is retained.
- (j) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Subcontractor by the Authorisee for any of the aforesaid purposes, the Authorisee shall remain responsible for obligations performed or to be performed by the Subcontractors to the same extent as if such obligations were to be always performed by the Authorisee and shall at all times be solely responsible for any defect, deficiency or delay by the Subcontractor in the implementation of the Project/execution of Works.
- (k) The Authorisee further undertakes and covenants that it shall be solely responsible for all payments to be made to the Subcontractors and shall indemnify the Grantor and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the GMDA may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Authorisee of its obligations to the Subcontractors including non-payment of any monies to such Subcontractors.



- (l) The Authorisee shall provide to the Grantor notarised true copies of every Transaction Document duly executed, to which the Authorisee is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of such execution or amendment etc.
- (m) Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of the Grantor if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Grantor and in the event any replacement, modification or amendment is made without such consent, the Authorisee shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Grantor.
- (n) Comply with its obligations set out in the Transaction Documents.
- (o) Ensure and procure that each Project Contract contains provisions that would entitle Grantor or a nominee of the Grantor to step into such agreement at the Grantor's discretion, in place and substitution of the Authorisee in the event of termination pursuant to the provisions of this Agreement.
- (p) Not enter into any material contract, including without limitation, any EPC contract or agreement with any affiliated party related to or in connection with the Project by the Independent Engineer/Consultant prior to the execution of any such contract.
- (q) The Authorisee shall provide to the Grantor and the Independent Engineer/Consultant/Expert Committee reports on a regular basis during the Authorisation Period in accordance with the provisions of Article 7 and as set forth elsewhere in the Agreement and at all times provide the Grantor such information, data and documents as the Grantor may reasonably require.
- (r) The Authorisee shall take all reasonable precautions for the prevention of accidents on or about the Project Location and provide all reasonable assistance and emergency medical aid to accident victims. For this purpose Authorisee shall maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.
- (s) The Authorisee shall pay all fines, late fees and other outgoings in relation to the use of utilities and services by the Authorisee or its Contractors and agents during the implementation and operation of the Project such as garbage collection and disposal, electric power, and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.
- (t) The Authorisee shall undertake marketing of advertisements rights at its cost and expense and liaison with sector players, and interested parties etc.
- (u) The Authorisee shall maintain required insurance in accordance with the provisions hereof.

- (v) The Authorisee shall provide all assistance to the Grantor and the Independent Engineer/Consultant/Expert Committee as they may reasonably require for the performance of their duties and services under this Agreement;
- (w) The Authorisee shall be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards.
- (x) The Authorisee shall subject to the provisions hereof, achieve Project Completion within eight months (8) from the Compliance Date.
- (y) The Authorisee shall hand over the Project /Project Assets free from encumbrances and encroachments to the Grantor or its nominated agency upon the expiry/termination of the Authorisation Period/this Agreement.
- (z) The Authorisee shall promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer/Consultant and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- (aa) The Authorisee shall confine its activities to the Project Location and to any additional areas arranged by the Authorisee at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- (bb) The Authorisee shall commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate.
- (cc) The Authorisee shall Operate, maintain, manage, repair the Project/Project Facilities at its cost and risk during the Operations Period, strictly in accordance with the provisions of this Agreement, Development Controls and Technical Specifications as enumerated at Section-II of the RFP, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- (dd) The Authorisee shall make timely payments of applicable statutory taxes, levies, cess, rents, fines to respective Government Agencies during the Authorisation Period, including the applicable Advertisement Tax payable by the Authorisee to the GMDA or any other Government Agency.

## **Section 5.2 - Obligations of Preferred Bidder**

- (a) The Preferred Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Authorisee's activities such that the experience and expertise becomes available to the Authorisee on an on-going basis:

- I. Preparation of concepts with 3D views along with the Architectural/G.A drawings for the finalized option within one month of agreement signing and Structural Designs for the Project Facility and other Designs and Drawings within 3 months;
- II. Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.
- III. Marketing of the advertisement rights;
- IV. Compliance with the provisions of this Agreement relating to liability and indemnification; and
- V. Implementation of measures for safety, security and protection of the works, property, life and materials at the Project Location and the environment.

### **Section 5.3 - Obligations of Grantor**

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Grantor agrees and undertake as under:

- (ee) The Grantor shall, at the request of the Authorisee, grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Authorisee in obtaining all the Applicable Permits from Government Authorities, Authorisations to import equipment and materials required for the Project ; provided that nothing contained in this provision shall relieve the Authorisee of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Authorisee (i) provides to the Grantor all necessary relevant details and other information as may reasonably be required by the Grantor and (ii) keeps the Applicable Permits in force and effect throughout the Authorisation Period.
- (ff) Upon written request from the Authorisee, assist the Authorisee in obtaining access to all necessary infrastructure facilities and utilities, and on terms no less favorable to the Authorisee than those generally available to commercial customers receiving substantially equivalent facilities/utilities.
- (gg) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Authorisee of its rights and benefits under the Authorisation granted herein, the Grantor shall, if requested by the Authorisee in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

- (hh) The Grantor shall assist the Authorisee in obtaining police assistance against payment of prescribed costs and charges, if any, for maintaining security at the Project Location.

## ARTICLE 6 - PROJECT IMPLEMENTATION

### Section 6.1 – Architectural, Structural Designs and Advertisement Space

- (a) The Grantor may Constitute an ‘Evaluation Committee’ consisting of the Members as it deems fit, for bid evaluation and approval of the Architectural and Structural Design prepared by the Authorisee.
- (b) Within one month from the date of agreement signing, the Authorisee shall at its cost prepare as per the RFP terms and submit to the Grantor and the Evaluation Committee, the architectural design / G.A. drawings for the Project for approval by GMDA for concepts submitted.
- (c) The detailed architectural and structural design for the Project shall, inter alia, set out the full details of the developmental activities proposed to be carried out by the Authorisee for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Authorisee, the Project Implementation Schedule with the Project Milestones, with milestone dates, names of likely Subcontractors/ vendors etc., plans for mobilization of finances, **clearly mark the advertisement space, type of advertisement panels and area of the advertisement**, plans for marketing the advertisement rights and such other similar details which define and clarify the method and direction of the Authorisee’s plans for the implementation of the Project.
- (d) The Grantor and the Evaluation Committee shall review the Architectural Designs submitted by the Authorisee for conformity with the Specifications and Standards and in the event the Evaluation Committee has any objection, it shall promptly within “21 working days” from the submission date by the Authorisee, notify the Authorisee of its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon the Authorisee shall within “7 working days” of such notification provide necessary clarification to the Grantor and the Evaluation Committee and/ or re-submit the revised Designs or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Grantor and the Evaluation Committee.
- (e) If the Grantor and the Evaluation Committee does not object to the detailed architectural design submitted to it by the Authorisee within “28 working days” of submission, Grantor and the Evaluation Committee shall be deemed to have approved such architectural design (“**Approved Designs**”). Within “15 working days” after the Architectural Design is approved, the Authorisee shall submit the Evaluation Committee, the Structural Design, duly verified & approved by the Independent Agency appointed/designated by the Grantor. Once such Structural Design is complete, the Authorisee shall be entitled to proceed with the Project accordingly. However the Authorisee expressly, agrees and confirms that non communication of

any comments by the Grantor and / or the evaluation committee in terms of above clause shall not mean or be construed to mean that the right of the Grantor or the Evaluation Committee to notify the objections / comments / or to suggest modifications in architectural and structural design is forfeited.

- (f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Grantor and / or the Evaluation Committee in relation to the architectural and structural design, the Authorisee shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Authorisee shall at all times remain solely responsible for the technical feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (g) Any design, drawing or specification provided by the Grantor to the Authorisee shall only be indicative and the Authorisee shall accept the same at its sole risk, cost and consequence. The Grantor or Evaluation Committee shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the architectural and structural design or the construction and implementation of the Project/Works by the Authorisee on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Grantor and / or the Evaluation Committee.
- (h) If the Authorisee suggests increase in the advertisement space over and above as stipulated in the Section –II of RFP document the Authorisation Premium payable by the Authorisee shall be increased on pro-rata manner, subject to the approval of the Grantor.

### **Section 6.2 - Development of Project Location and Implementation of Works**

- (i) The Authorisee shall commence the Works for the development and implementation of the Project within 1 (One) Week of the Compliance Date (“Construction Commencement Date”) The Authorisee shall, by itself or through its Subcontractors, at its cost and risk undertake the development of the Project Location, including land filling, leveling, clearing, shifting of utilities, landscaping and demarcation and division of the Project Location etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, Development Controls and Technical Specifications and Good Industry Practice.

### **Section 6.3 - Project Completion**

- (j) The Authorisee shall complete the Construction Works within a period of Eight (08) Months from the Compliance Date, which may be extended under the provisions of this Agreement or by mutual agreement of the Parties.
- (k) The Project shall be deemed to be complete and open for Commercial Operations only when the Completion Certificate is issued by the Grantor (the “Project Completion”). The Completion Certificate shall specify the date on which, in the opinion of the Grantor the Project was completed and ready for Commercial Operations (the “Commercial Operations Date”).

- (l) Subject to compliance with the provisions of this Agreement and the Applicable Laws, the Authorisee shall be entitled to undertake the marketing of advertisement rights and use of the Project Facilities. For the avoidance of doubt, the Authorisee shall have no right and authority to sub-let the Project Location to any person, in full or part in any manner, form, arrangement, and device whatsoever.

#### **Section 6.4 - Marketing of Advertisement Rights**

- (m) The Authorisee shall only hoist advertisement in the manner specified in the Advertisement Area mentioned in the “Approved Designs” as approved by the GMDA. The total area of advertisement shall not be more than the space approved by GMDA and for which license / permit has been issued by GMDA.
- (n) The Authorisee shall be solely responsible for the marketing of the advertisement rights at the Project Facilities. The Authorisee shall be entitled to commence such marketing at its cost and risk from the Compliance Date and to accept advances, booking amounts and other considerations from such users from such date; provided that Grantor shall not be liable in any manner whatsoever to any Person in this behalf and the Authorisee shall disclose the same to such Users.
- (o) The Authorisee shall ensure that the advertising and marketing of the advertisement rights at the project facilities is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws. The Authorisee shall ensure that advertising at the project facilities, in any manner, affect/harm the project facilities or hinder/restrict the pedestrians from using the project facilities. The Authorisee shall abide by the Provisions of the Development Controls, Specifications and Standards as set forth at Section II of the RFP. The Authorisee shall comply with the guidelines of Advertising Standards Council of India (ASCI) and other guidelines/ legislations/ Government Orders/Municipal Acts/Bye-Laws etc. relating to advertisement/ commercial publicity/ display of items etc. The Authorisee shall further ensure that the advertisement has no objectionable and indecent portrays of people, products or any items. The advertisements should not hurt the sentiments of any group or groups of the society.

#### **Section 6.5 – Operation and Maintenance of the Project**

- (p) Effective from the Project Completion Date and until the end of the Authorisation Period, the Authorisee shall undertake or cause at its cost and risk the operation and maintenance of the Project/Project Facilities, including the infrastructure, works, firefighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, provisions of the Development Controls, Specifications and Standards as set forth at Section II of the RFP., Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or through Operation and Maintenance (O&M) Contractor(s) or through suitable management/service contractors, without in any way relieving the Authorisee of its responsibilities, obligations and liabilities as set out in this Agreement; provided that



the O&M Contractors shall be appointed not less than 1 (one) month before the Project Completion. Within 1 (One) week of the appointment of such contractors the Authorisee shall inform the Grantor of their appointment. In case of O&M Contractor or management/service contractors, the Authorisee shall exercise appropriate control over them and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.

- (q) The Authorisee shall make timely payments of all taxes like Advertisement Tax etc. to the concerned Departments.
- (r) The Authorisee shall make prompt payment of power bills on a monthly basis or as raised by the concerned authority at its own cost. In case of Non-payment of two subsequent power bills by the authorisee and/ or non submission of payment receipt to GMDA, the authorisee is liable to pay penalty at the rate of 18% per annum on the due amount for the period of delay. If the payment of six consecutive bills is not done, it will be construed as event of default of the authorisee appropriate action will be initiated as per the agreement.
- (s) The Authorisee shall make appropriate arrangements for security at the Project Location and abide by the security regulations/procedures prescribed by the Grantor or any Government Authority from time to time. The Authorisee may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- (t) The Authorisee or the Persons claiming through or under it shall be free to determine the Tariff at market driven rates in respect of the advertisement rights at the project facilities and shall have the right to demand, collect, retain and appropriate and revise the Tariff; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- (u) The Authorisee may, effective from the Operations Date, grant on license basis the advertisement rights at the designated spaces at the Project Facilities, on mutually agreed market driven terms and conditions (hereinafter the “Contractual Arrangements”) with any Person of its choice (hereinafter the “Contractual Counter Parties”).
- (v) The Authorisee may determine, demand, collect, revise, retain and appropriate the Tariff for such Contractual Arrangements at rates determined by the Authorisee;
- (w) All Commercial Arrangements shall be subject to the following terms and conditions:
  - (i) such Contractual Arrangements shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions of this Agreement;
  - (ii) the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties , if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
  - (iii) the duration of such Contractual Arrangements shall be limited to and be coterminous with this Agreement /not exceed the Authorisation Period herein

- (iv) such Contractual Arrangements shall come into effect and operation only upon the Authorisee achieving Project Completion in accordance with the provisions of this Agreement unless otherwise authorised by the Grantor in writing;
- (v) Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- (vi) The Authorisee shall submit to the Grantor for its information and records a notarised true copy of the agreements/documents relating to the Contractual Arrangements within 15 (fifteen) days of the date of execution, modification or amendment thereof.
- (vii) The Grantor shall not be liable in any manner whatsoever to any Entity/Person in respect of any disputes relating to the Contractual Arrangements between the Authorisee and such entity or person or otherwise. The Authorisee shall indemnify and keep indemnified the Grantor, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.
- (viii) At any time during the Authorisation period, if the project facilities have to be temporarily removed and replaced or renovated due to road widening or any other reason that is beyond the control of GMDA, then GMDA would compensate the expenditure incurred towards renovation and the revenue loss from the advertisements, if any, in terms of additional Authorisation period. Such time period will be decided as per the projected revenues during the extended period which will be computed based on the latest year revenues from the project facilities.

## **ARTICLE 7 - PROJECT MONITORING**

### **Section 7.1 - Independent Engineer/Consultant**

- (a) The Grantor shall appoint a consulting engineering firm/company of engineers having the required experience in similar projects to be the independent consultant under this Agreement (the “Independent Engineer/Consultant”). Such appointment shall be made no later than “7 working days” from the Compliance Date and shall continue for a period until issuance of Completion Certificate. The remuneration, cost and expenses of the Independent Engineer/Consultant shall be borne entirely by the Authorisee.
- (b) The Independent Engineer/Consultant shall monitor the implementation of the Project, conduct on behalf of the Grantor the periodic verification of the progress and quality in the construction, issue the Provisional and/or the Completion Certificate and discharge its duties and functions substantially in accordance with the terms of reference set forth in this Agreement. The Independent Engineer/Consultant shall submit periodic reports (at least once in a week) in respect of its functions to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfil their obligations hereunder.
- (c) In addition to the Independent Engineer / Consultant , GMDA shall also have access to the Project Location, the Project Facilities and to all property, documents, records etc. relating thereto for purpose of inspection, monitoring, ensuring compliance with provisions of this agreement.



- (d) The Independent Engineer/ Consultant shall have no authority to relieve the Authorisee of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Independent Engineer/ Consultant (including absence of disapproval) shall not relieve the Authorisee from its obligations and responsibilities hereunder.
- (e) In the event the Authorisee has reason to believe that the Independent Engineer/ Consultant is not discharging its duties and functions in a fair, efficient or diligent manner, it may make a written representation to the Grantor, supported with necessary documents and specific instances of causes and grievances and seek termination of the appointment of such consultant. Within 7 (seven) working days of the date of such representation, the Grantor shall hold a tripartite meeting with the Authorisee and such consultant for resolving the matter amicably and giving a fair hearing to such consultant. In the event the matter is not amicably resolved within 7 (seven) days of such meeting, the appointment of the Independent Engineer/Consultant shall be forthwith terminated; provided that prior to such termination the Grantor shall have appointed another Independent Engineer/Consultant to replace the existing one in accordance with the provision of Section 7.1 (a) above. The replacement of the Independent Engineer/Consultant shall be effected so as to maintain the continuity in supervision and monitoring of construction of the Project by it.

### **Section 7.2 - Reporting and Inspection**

The Authorisee shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder:

#### **(a) Construction Period Reports**

The Authorisee shall provide to the Grantor and the Independent Engineer/Consultant a weekly progress report during the Construction Period, which shall contain the following information:

- (1) Areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning, details. The critical path schedules shall be updated and included as part of this report in order of priority.
- (2) Actual progress made during that week against the construction schedule including a description in reasonable detail of the work carried out;
- (3) Any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- (4) Any potential or actual deviations from the construction schedule, Provisions of the Development Controls and Technical Specifications as set forth at Section II of the RFP and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- (5) Details of any changes to the proposed date of completion of construction and the reasons for such changes; and
- (6) Written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits. The Authorisee shall, without any responsibility for the removal of the above defects/ deficiencies, promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Grantor/the Independent Engineer/Consultant and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement

#### **(b) Operation Period Reports**

The Authorisee shall provide to the Grantor and the Expert Committee, a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- a. Summary of operating and financial results for that quarter;

- b. Details of the Revenue for the relevant quarter from each source;
- c. Maintenance Plan: a maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan);
- d. Other Project and Financial Information

The Authorisee, after becoming aware, will also provide the information; (i) with respect to any Force Majeure Event affecting the Project; (ii) any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project; and (iii) details of contravention of any Applicable Law or with the terms of any Applicable Permit and any fines or penalties that have or may thereby be incurred.

The Authorisee shall also provide the Information with respect to any adverse material change in the financial condition of the Authorisee or the Project promptly following such occurrence.

#### **(c) Additional Information**

The Authorisee agrees to provide the Grantor and the Independent Engineer/Consultant/Expert Committee such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

#### **(d) Inspection**

The Grantor, the relevant Government Authorities and the Independent Engineer/Consultant, Expert Committee and their representatives shall at all reasonable times and upon reasonable notice have access to the Project Location, the Project/Project Facilities and the Works and all related designs, documents, reports, records technology and workmanship to review progress of the construction, operation and maintenance of the Project/Project Facilities and to ascertain compliance with any of the requirements of this Agreement, and to check the progress of the works or for performing statutory duties and the Authorisee shall provide the necessary cooperation and assistance to them in this behalf Provided that any failure on the part of the Grantor, the concerned Government Authorities and the Independent Engineer/Consultant to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc. (i) amount to any consent or approval of the Grantor nor shall the same be deemed to be a waiver of any of the rights of the Grantor under this Agreement; and (ii) release or discharge the Authorisee from its obligations or liabilities under this Agreement in respect of such work etc.

## **ARTICLE 8 - FINANCIAL COVENANTS**

### **Section 8.1 - Financing for Project**

- (a) The Authorisee agrees and undertakes to obtain financing for the design, development, construction and operation and maintenance of the Project in accordance with the provisions of the Authorisation Agreement.
- (b) The Authorisee may assign its rights, title or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, title and interest under this Agreement, in and to the Project Assets, and its right to receive Tariff (including a Security Interest on its rights, title and interests to the advertisement rights to it and its right to receive monies/advertisement charges) in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same.

- (i) Provided that the Grantor shall be informed by the Authorisee as to the creation of any Security Interest in favour of the Lenders , together with the Lenders particulars within a period of 1 (one) week from the date such Security Interest comes into existence and provide to the Grantor within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Authorisee and any consequential failure or inability on the part of the Grantor to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Authorisee only.
- (ii) Provided further in the event of termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Grantor to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

### **Section 8.2 - Payments to Grantor**

- (a) In consideration for the grant of the Authorisation, the Preferred Bidder/Authorisee shall have made the following payments before the execution of this Agreement in the manner mentioned hereunder:
- (i) Authorisation Premium: In consideration of the Authorisation granted for implementation of Project and rights appurtenant thereto in favour of the Authorisee, the Authorisee shall pay one time Authorisation Premium on Signing of Agreement.
- (ii) Advertisement Tax:  
The Authorisee effective from the Commercial Operation Date shall make timely payments of applicable Advertisement Tax to Guwahati Municipal Corporation or any other Government Agency authorized to levy such tax / charges for advertisement hoisted within its jurisdiction.

### **Section 8.3 - Advertisement Tariff**

- (a) Effective from COD and during the Operations Period, the Authorisee shall be entitled to fix at rates fixed/structured at the discretion of the Authorisee from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the Tariff at market driven rates for the advertisement rights at the Project Facilities, arranged or procured by the Authorisee by itself or under or pursuant to Contractual Arrangements. Provided that the Authorisee shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.

## **ARTICLE 9 - PERFORMANCE SECURITY**

### **Section 9.1 - Performance Security**

- (a) For securing the performance of the obligations of the Authorisee/ Preferred Bidder , during the Construction Period, under the RFP and this Agreement, the Preferred Bidder has along with the execution of this Agreement, delivered to the Grantor (within 15 days of issue of LoI) a Demand Draft (appendix IV)/ Bank Gurantee for a sum of Rupees \_\_\_\_\_

(as mentioned in Section I of RFP) valid from the date of issue thereof and until Commercial Operation Date, drawn from a Nationalized bank, and payable and enforceable in Guwahati, Assam (the “Construction Performance Security”). For avoidance of any doubt it is clarified that the said Construction Performance Security shall be for securing the performance of the Authorisee/Preferred Bidder as referred above, in respect of the entire Project including the construction of all FOBs allotted under this Agreement. This Performance Security shall be returned by the Grantor to the Authorisee/ Preferred Bidder within one week of issuance of the completion certificate by GMDA.

(b) For securing the due and punctual performance of obligations of the Authorisee, during the Operations Period under the RFP and this Agreement, the Preferred Bidder /Authorisee shall deliver to the Grantor, a demand draft of **Rupees** \_\_\_\_\_ (as mentioned in the RFP) favouring the Grantor from a Nationalised/ Scheduled bank acceptable to the Grantor and enforceable and payable in Guwahati (the “Operations Performance Security”) and valid from the Commercial Operation Date. The Operation Performance Security shall be valid for one year and a fresh performance security shall be submitted every year, atleast fifteen days prior to the expiry of the performance security in force, without any notice from GMDA till the end of Authorisation period and until the date of issue of the Vesting Certificate. In case of non submission of fresh performance security as above, GMDA shall forfeit the Performance Security in force without notice.

### **Section 9.2 - Appropriation of Performance Security**

- (a) In the event of the Authorisee being in default of the due, faithful and punctual performance of its obligations under the RFP, the LOA, and this Agreement during the Construction Period or during the Operations Period and until the date of issue of the Vesting Certificate, as the case may be, or owing any sums whatsoever to Grantor under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Grantor for or against the Authorisee under this Agreement or against the Grantor in respect of this Agreement, the Grantor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Securities as damages for such default, dues, demands or claims.
- (b) The decision of the Grantor as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Authorisee. The Authorisee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Grantor under this Agreement is required to be provided in connection with any demand made by the Grantor to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Grantor’s written demand as aforesaid.
- (c) In the event of encashment of the Performance Security by the Grantor, in full or part, the Authorisee shall within 15 (fifteen) days of receipt of the encashment notice from the Grantor provide a fresh Performance Security or replenish the existing Performance Security, as the case may be. The provisions of this Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Authorisee’s failure to comply with this provision shall constitute an Authorisee Event of Default which shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 15 hereof.

## ARTICLE 10 – INSURANCE

### Section 10.1 - Insurance Cover

The Authorisee shall maintain or cause to be maintained, at its own expense, insurance on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders including but not limited to the insurance policies covering the following (the “Insurance Cover”):

#### (a) During Construction Period

- (i) Construction/builders’/contractors’ all risk insurance;
- (ii) Erection all risk policy
- (iii) comprehensive third party liability insurance including injury or death to personnel of the Grantor and others who may enter the Project Location;
- (iv) workmen’s compensation insurance;

#### (b) During Operations Period

- (i) loss, damage or destruction of the Project Facilities/Project at replacement value or full market value (including fire, burglary, standard and special peril)
- (ii) the Authorisee’s general liability arising out of the Authorisation;
- (iii) liability to third parties

Apart from the above Authorisee shall take any other insurance that may be necessary to protect the Authorisee and its employees and its assets, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (b) above.

### Section 10.2 - Evidence of Insurance

The Authorisee shall, furnish to the Grantor copies of all insurance policies and evidence of payment of premium in respect of the Insurance Covers. In the event the Authorisee does not maintain any Insurance Cover pursuant hereto, the Grantor may, at its option, effect such insurance and the Authorisee shall reimburse all the costs and expenses incurred in this behalf by the Grantors within 15 (fifteen) days of receipt of the Grantor’s claim in respect thereof

### Section 10.3 - Application of Insurance Proceeds

The Authorisee shall apply insurance proceeds for the repair, renovation, restoration or reinstatement of the Project or any part thereof, which may have been damaged or destroyed.

### Section 10.4 - Validity of the Insurance Cover

The Authorisee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Authorisation Period and furnish certified true copies of the same to the Grantor. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days’ clear notice of cancellation is provided to Grantor in writing. If at any time the Authorisee fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Grantor may at its option purchase and maintain such insurance and all sums incurred by the Grantor therefore shall be reimbursed by the Authorisee forthwith on demand, failing which the same shall be recovered by the Grantor by exercising right of set off or otherwise.



## ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

### Section 11.1 - Mutual Representations and Warranties

Each Party represents and warrants to the other Party 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;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) It has the financial standing and capacity to undertake the Project;
- (f) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

### Section 11.2 - Further Representations and Warranties of Preferred Bidder/ Authorisee

In addition, the Authorisee represents and warrants to the Grantor that:

- i. The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with any agreement or instrument to which the Authorisee is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- ii. There are no actions, suits, proceedings, or investigations pending or, to the Authorisee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Authorisee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- iii. 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 individually or in the aggregate have or may have Material Adverse Effect;
- iv. No representation or warranty by the Preferred Bidder /Authorisee contained herein or in any other document furnished by it to the Grantor or to any Government Authority in relation to Applicable Permits or otherwise 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;
- v. Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Authorisee, during the Authorisation Period, the outcome of which may result in the breach of or constitute a default of the Authorisee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Authorisee's ability to perform its obligations and duties under this Agreement, the Authorisee shall immediately intimate the same to the Grantor;
- vi. In submitting its Proposal the Preferred Bidder/Authorisee has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.

- vii. All rights and interests of the Authorisee in the Project, the Project Facilities and Project Assets shall pass to and vest in the Grantor or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Preferred Bidder/Authorisee or the Grantor and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Authorisee subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- viii. No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Authorisee, to any person by way of commission or otherwise for securing the Authorisation execution of this Agreement or for influencing or attempting to influence any officer or employee of the Grantor.
- ix. The Preferred Bidder is duly authorized through a valid Power of Attorney by (Name of the Consortium/Members) to execute this Agreement on their behalf.

### **Section 11.3 - Waiver of Sovereign Immunity**

Each Party hereto unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;

### **Section 11.4 – Disclaimer**

- (a) Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Authorisee acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Authorisee has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, Provisions of the RFP, the Specifications and Standards therein, the Project Location and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Grantor, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Authorisee's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Authorisee in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Location.
- (b) The Preferred Bidder /Authorisee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in subclause (a) above and hereby confirms that the Grantor, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Authorisee or Persons claiming through or under the Preferred Bidder/Authorisee.

- (c) The Preferred Bidder /Authorisee accepts that it is solely responsible for the verification of any design, data, documents or information provided to the Authorisee by the Grantor, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- (d) The Preferred Bidder /Authorisee is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it

## **ARTICLE 12- LIABILITY AND INDEMNIFICATION**

### **Section 12.1 - Liability of Authorisee**

Notwithstanding anything to the contrary contained in this Agreement,

- (a) in addition to the Authorisee's liability and obligations and the Grantor's remedies provided elsewhere in this Agreement, the Authorisee shall be solely responsible for any loss of or damage to the Project/Project Facilities and the Project Assets, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Grantor:
  - (i) during the Authorisation Period resulting from any negligent act or omission of the Authorisee, the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
  - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Authorisee, Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Authorisee, Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- (b) The Authorisee shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Authorisee is liable or which is attributable to the Authorisee and, in turn, the Persons claiming through or under the Authorisee.

### **Section 12.2 – Indemnification**

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Authorisee agrees to indemnify and hold harmless the Grantor and its officers, employees, agents, trustees and consultants (each a "Grantor Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "Losses") to which the Grantor Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Authorisee or (ii) the failure by Authorisee to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Authorisee Person claiming through or under the Authorisee or (iii) any claim or proceeding by any Third Party against the Grantor arising out of any act,



deed or thing done or omitted to be done by Authorisee or (iv) as a result of failure on the part of the Authorisee to perform any of its obligations under this Agreement or on the Authorisee committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Authorisee to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project Facilities or the Authorisee's Contactors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Authorisee or its Contractor(s), subcontractor(s), or employees, servants, agents of such Contractor(s) and/or subcontractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Authorisee's use and occupation of Project Location and/or construction, operation and maintenance of the Project. For the avoidance of doubt, indemnification of Losses pursuant to this Article 12 shall be made in an amount or amounts sufficient to restore each Grantor Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-section (a) of this Section 12.2, (i) the Authorisee shall fully indemnify and defend the Grantor Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Authorisee and the Persons claiming through or under the Authorisee to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Authorisee and the Persons claiming through or under the Authorisee, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Authorisee/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Authorisee or any Person claiming through or under the Authorisee, which are payable by the Authorisee or such Person. (ii) the Authorisee shall further indemnify, defend and hold harmless the Grantor Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Authorisee's performance of this Agreement or arising out of any act or omission of the Authorisee, and in turn of the Persons claiming through or under the Authorisee.
- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

### **Section 12.3 - Indirect or Consequential Losses**

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

## **ARTICLE 13 - FORCE MAJEURE**

### **Section 13.1 - Force Majeure Event**

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances set out hereunder or the consequence(s) thereof which affect or prevent the

Party claiming force majeure (“Affected Party”) from performing its obligations in whole or in part under this Agreement and which event or circumstance (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect.

**(a) Non Political Force Majeure Events:**

Non Political force majeure events shall mean one or more of the following acts or events:

- i. Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, storm, cyclone, hurricane, flood, landslide, lightning, earthquakes, volcanic eruption or fire (to the extent originating from a source external to the Project), exceptionally adverse weather conditions affecting the construction or operation of the Project;
- ii. Radioactive contamination, ionizing radiation;
- iii. Epidemic, famine;
- iv. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, rebellion, insurrection, terrorist or military action, nuclear blast / explosion, politically motivated sabotage or civil commotion;
- v. Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Authorisee in any proceedings (which are non collusive and duly prosecuted by the Authorisee) for reasons other than failure of the Authorisee or of any Person claiming through or under it to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Grantor; or
- vi. Any event or circumstances of a nature analogous to any of the foregoing.

**(b) Political Force Majeure Events:**

Political force majeure events shall mean one or more of the following acts or events by or on account of GoI, GoA or any other governmental agency:

- i. Change in law/policies of the Government;
- ii. Expropriation or compulsory acquisition by any governmental agency of any project assets or the rights of the Authorisee or of the contractors; and
- iii. Unlawful or unauthorized or without jurisdiction revocation of, refusal to renew or grant without valid cause any consent or approval required by the Authorisee or any of the contractors to perform their respective obligations under the project agreements. Provide that such delay, modification, denial, refusal or revocation did not result from the Authorisee or any contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

**Section 13.2 – Notice of Force Majeure Events**

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (“the Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.

- (b) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information giving the status and steps taken or proposes to be taken by it, to alleviate the impact of the Force Majeure Event or to mitigate the damage due to Force and such other information as the other Party may reasonably request.

### **Section 13.3 - Period of Force Majeure**

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Section 13.4; or  
(b) termination of this Agreement pursuant to Article 13.6 hereof

### **Section 13.4 - Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

### **Section 13.5 - Costs, Revised Timetable**

- (a) Costs: Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.  
(b) Extension of Time/ Period  
The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Authorisation Period by the Grantor in appropriate cases.

### **Section 13.6 - Termination Due to Force Majeure Event**

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties is 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 the Agreement in which event, the provisions of Article 15 shall, to the extent expressly made applicable, apply.

## **ARTICLE 14 - EVENTS OF DEFAULT**

### **Section 14.1 - Events of Default**

Event of Default means the Authorisee Event of Default or the Grantor Event of Default or both as the context may admit or require.

**(a) Authorisee Event of Default**

The Authorisee Event of Default means any of the following events unless such an event has occurred as a consequence of the Grantor's Event of Default or a Force Majeure Event:

- i. the Authorisee's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement.
- ii. the Authorisee's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- iii. any representation made or warranties given by the Authorisee/ Developer under this Agreement is found to be false or misleading.
- iv. the Authorisee passing a resolution for voluntary winding up.
- v. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Authorisee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- vi. levy of an execution or distraint on the Authorisee's Assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body , court , tribunal or judicial authority passing or issuing any order or direction against the Authorisee which would have an or likely to have an Material Adverse Effect on the project or the ability of the Authorisee to comply with or discharge the obligations and responsibilities under this Agreement.
- vii. amalgamation of the Authorisee with any other company or reconstruction or transfer of the whole or part of the Authorisee's undertaking (other than transfer of assets in the ordinary course of business) without the Grantor's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Grantor, to undertake, perform/discharge the obligations of the Authorisee under this Agreement, necessary approval shall be granted by the Grantor.
- viii. the Authorisee engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- ix. the Authorisee repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- x. the Authorisee has delayed payment of Authorisation premium, Advertisement tax, other payments which is due to Authorisee, if any, that has fallen due under this Agreement beyond the specified period or if not so specified beyond 30 (thirty) days.
- xi. the Authorisee is adjudged bankrupt or insolvent
- xii. the whole of essential project facilities or any part of the essential project facilities remains closed / un-operational for a aggregate period exceeding "fifteen" days in a year (except for reasons on account of force majeure or Grantors event of default).
- xiii. The authorisee committing any breach or non compliance of any of the terms and conditions of the financing document executed between the Authorisee and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the security interest created in their favor under the financing documents, as permitted by this agreement, on the project assets and / or the rights and interest under this agreement.

- xiv. Such events as have been specified as Authorisee Events of Default under the provisions of this Agreement.

#### **(b) Grantor Event of Default**

- i. The Grantor's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of an Authorisee Event of Default or a Force Majeure Event;
- ii. any representation made or warranties given by the Grantor under this Agreement is found to be false or misleading;
- iii. expropriation or compulsory acquisition by any Government Authority of the Project/Project Facilities or part thereof or any material assets or rights of the Authorisee; provided the same has not resulted from an act or default of the Authorisee;
- iv. any defect in the Grantor's title, ownership and possession of the Project Location/site.

#### **Section 14.2 - Parties Rights**

- (a) Upon the occurrence of the Authorisee Event of Default, the Grantor shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- (b) Upon the occurrence of the Grantor Event of Default, the Authorisee shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement:

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall

- (i) in terms of Section 14.3 provide an opportunity to the other party to state its position and give explanation in the matter,
- (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

#### **Section 14.3 - Consultation Notice**

Either Party exercising its right under Section 14.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the "Consultation Notice").

#### **Section 14.4 - Remedial Process**

Following the issue of Consultation Notice by either Party, within a period not exceeding 45 days for the Event of Default during the Construction Period and with 7 days for the event of default during the Operation Period or such extended period as they may agree ( the "Remedial Period") the Parties shall, in consultation with the Lenders, endeavor to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Authorisee Event of Default, the Parties shall in consultation with the Lenders endeavor to arrive at an agreement as to one or

more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

- (a) the change of management or control/ownership of the Authorisee;
- (b) the replacement of the Authorisee by a new authorisee (“Substitute Entity”) on terms no less favorable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement which shall include:
  - (i) the criteria for selection of the Substitute Entity,
  - (ii) the transfer of rights and obligations of the Authorisee surviving under this Agreement to the Substitute Entity,
  - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
  - (iv) assumption by the Substitute Entity of the outstanding obligations of the Authorisee under the Financing Documents and preserving Lenders’ charge on the Authorisee’s assets ,
  - (v) assumption by Substitute Entity of any amounts due to the Grantor from the Authorisee under this Agreement.

#### **Section 14.5 - Obligations during Remedial Period**

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

#### **Section 14.6 - Revocation of Consultation Notice**

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Section 14.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

#### **Section 14.7 - Termination Due to Events of Default**

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Section 14.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 15 shall, to the extent expressly made applicable, apply.

#### **Section 14.8 - Step-in-rights**

The Authorisee agrees that the Grantor shall be entitled to operate the Project Facilities and all other incidental on the occurrence of an Authorisee Event of Default. In the event of an Authorisee Event of Default, the Grantor may (but shall not be obliged to) operate, or procure and cause operation of the Project Facilities upon the issue of the Termination Notice.

### **ARTICLE 15 - TERMINATION AND EXPIRY OF AGREEMENT /AUTHORISATION**

#### **Section 15.1 - Termination Procedure**

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing (“Termination Notice”) to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 60 (sixty) days and not ordinarily be more than 90 (ninety) days, (“Termination Period”) and at the expiry of the Termination Period, this Agreement shall stand terminated.



**Section 15.2 - Obligations During Termination Period**

During Termination Period, the Parties shall subject to the provisions of Article 14 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

**Section 15.3 – Requisition**

Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, the Grantor shall by a notice in writing (“Requisition”) call upon the Authorisee to furnish the information to enable the Grantor to estimate the likely compensation payable by the Grantor to the Authorisee and/or to finalise the items of Authorisee’s assets comprised in the Project and the Project Assets to be handed over to/taken over by the Grantor.

**Section 15.4 - Condition Survey**

- (a) The Authorisee agrees that six months prior to the expiry of the Authorisation Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the Expert Committee under the Grantor’s supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Authorisee’s obligations under this Agreement and to prepare an inventory of the assets comprised in the Project
- (b) If, as a result of the condition survey, the Grantor shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement the Authorisee shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- (c) In the event the Authorisee fails to comply with the provisions of this Agreement, the Grantor may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Grantor shall be compensated by the Authorisee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

**Section 15.5 - Consequences of Termination**

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Authorisation Period by efflux of time or due to a Force Majeure Event or an Event of Default.

**(a) Transfer of Assets**

- (i) On the Transfer Date, the Authorisee shall subject to the provisions of this Agreement:
  - A. Transfer, assign and deliver to the Grantor or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project, Project Assets and the Project Location along with the buildings, facilities and structures constructed on, over, at or under it and its right, title and interest in and to the Project the Project Assets.

- B. transfer all its rights, titles and interest in or over the tangible assets comprised in the Project (including movable assets which the Grantor agrees to take over) to the Grantor or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- C. hand over to the Grantor or its nominated agency all documents including as built drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
- D. to the extent possible assign to the Grantor or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
- E. at its cost remove from the Project Location all such moveable assets which are not taken over by or transferred/assigned to the Grantor or its nominated agency. In the event the Authorisee fails to remove such objects within the stipulated time, the Grantor or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Authorisee notice of its intention to do so to a suitable location for safe storage. The Authorisee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- F. All proceeds of insurance claims shall be handed over to the Grantor or its nominated agency and the Authorisee or Persons claiming through or under it shall have no claim thereon or rights thereto.
- G. The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all leasehold arrangements or licenses in relation to the Project Location and title to all such immovable property shall automatically revert to the Grantor or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
- H. It is clarified that only the assets of the Authorisee shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Authorisee and the Persons claiming through or under the Authorisee shall be taken over by the Grantor or its nominated agency. All such labour and employees shall be its responsibility of the Authorisee/such Persons even after the expiry of the Authorisation Period and they shall have no claim to any type of employment or compensation from Grantor or its nominated agency.
- I. All contracts, agreements, arrangement's etc entered into by the Authorisee with its suppliers, service providers, O&M contract's, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the Grantor.

**(b) Project Contracts**

The Authorisee shall at the cost of the Grantor transfer/assign such of the Project Contracts which the Grantor may require to be transferred in its favour subject to the counter parties to such contracts consenting to such transfer/ assignment. The Authorisee shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned to the Grantor provided, if the termination is on account of the Grantor Event of Default the Grantor shall



compensate the Authorisee to the extent of the termination payments, if any, made or to be made by the Authorisee to the counter parties to such contracts.

**(c) Applicable Permits**

The Authorisee shall, at its cost, transfer to the Grantor all such Applicable Permits which the Grantor may require and which can be legally transferred. Provided if the termination is on account of Grantor Event of Default the cost of such transfer shall be borne/ reimbursed by the Grantor.

**(d) Transfer Costs**

The Project and the Project Assets shall be transferred to the Grantor or its nominated agency, as the case may be, for a sum of Rupee 1.00 (Rs. One only).

**(e) Guarantees**

The Grantor shall be entitled to encash any subsisting bank guarantee(s) provided by the Authorisee, if the termination is on account of an Authorisee Event of Default.

**Section 15.6 - Vesting Certificate**

- (a) On the Transfer Date the Grantor/Expert-Committee shall verify, in the presence of the Authorisee or of a representative of the Authorisee, compliance by the Authorisee with the requirements of Section 15.5 above. In the event the Grantor/Expert notifies the Authorisee of shortcomings, if any, in the Authorisee's compliance with such requirements, the Authorisee shall forthwith cure the same.
- (b) The Divestment of all rights, title and interest in the Project, Project Assets and the Project Facilities shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 15.5 above shall be fulfilled. The Expert Committee shall on such date issue a certificate (the "Vesting Certificate"), with a copy thereof endorsed to the Grantor, which shall have the effect of constituting evidence of divestment by the Authorisee of all of its rights, title and interest in the Project and the vesting thereof in the Grantor or its nominee, as the case may be, pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Grantor or its nominee on or in respect of the Project on the footing that all Divestment Requirements have been complied with by the Authorisee.

**ARTICLE 16 - DISPUTE RESOLUTION**

**Section 16.1 – Arbitration**

In the case of any dispute arising upon or in relation to or in connection with the project thereof shall be amicably resolved through discussions between the parties, failing which the dispute may be settled under the rule of Indian Arbitration Act, 1996 by three arbitrators appointed, one each by the client and the consultant and the third by mutual agreement of these two arbitrators under such rules. The said arbitrators shall have full power to open up review and revise any decision, opinion, instruction determination certificate or evaluation of the Consultants and the client related to the dispute. In the event of failure of these discussions and judicial resolution becoming necessary, then and only in that event, the matter shall be referred to the courts of State of Assam, India.

## ARTICLE 17 - MISCELLANEOUS PROVISIONS

### Section 17.1 - Governing Law and Jurisdiction

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

### Section 17.2 - Waiver & Remedies

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or 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 authorized representative of such Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### Section 17.3 – Survival

The Termination/expiry of this Agreement shall not relieve either Party of any obligations hereunder which expressly or by implication survive Termination/expiry hereof.

### Section 17.4 - Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**Section 17.5 - Notices**

Unless otherwise stated, notices to be given under this Agreement shall be in writing and shall be given by hand delivery, recognised courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Grantor:

-----  
-----

Fax No./Tel no. -----

Attn:

If to Authorisee:

-----  
-----

Fax No./Tel no. -----

Attn:

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

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

**Section 17.6 – Severability**

- (a) If for any reason whatever 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, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

**Section 17.7 - No Partnership**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

**Section 17.8 - Language**

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and

printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

### **Section 17.9 - Counterparts**

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

### **Section 17.10 - Regulatory Framework for Infrastructure Projects**

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of authorisations related to infrastructure projects is introduced by GOI or GOA , the Parties shall consult in good faith and to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Authorisee hereunder are not adversely affected or additional material liabilities imposed.

### **Section 17.12 – Confidentiality**

Authorisee shall, without the prior written consent of the Grantor, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or “confidential”, concerning the other (including any information concerning the contents of this Agreement) except to its representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process.

### **Section 17.13 - Joint and Several Liability of Consortium/ Developer**

In case the Developer is a consortium of two Persons, all such Persons shall be jointly and severally liable to the Grantor for compliance with the terms of this Agreement. The Lead Member shall have the authority to bind all the members of the Consortium. Except as expressly provided herein, the composition of the Consortium shall not be altered without the prior written approval of the Grantor until Five (5) years from the Compliance Date.

### **Section 17.14 - No Liability for Review**

Except to the extent expressly provided in this Agreement,

- (a) no review, comment or approval by the Grantor/Government Authorities/ Independent Engineer/Consultant of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Authorisee nor any observation or inspection of the construction, operation or maintenance of the Project Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Authorisee from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Grantor or any Government Authority or Project Facility shall not be liable to the Authorisee by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.

### **Section 17.15 - Depreciation**

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Authorisee in the Project shall be deemed to be acquired and owned by the Authorisee.

**Section 17.16 Assignability**

(a) Except as otherwise provided in this Agreement, the Authorisee shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Grantor. Provided the Authorisee may assign its rights, interests and benefits under this Agreement to the Lenders as security for the Financial Assistance.

(b) Notwithstanding anything to the contrary contained in this Agreement, the Grantor may, after giving 60 (sixty) days’ notice to the Authorisee, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of Government of India, Government of Assam, by the operation of law on such terms and conditions as the Grantor may deem appropriate or as may be required by law.

**N WITNESS WHEREOF** the Parties have executed and delivered this Agreement by their duly authorised representative on the date first above written:

Signed on behalf of the Guwahati Metropolitan Development Authority	SIGNED, SEALED AND DELIVERED
_____(Signature) _____(Name) _____(Designation)	Authorisee by the hand of its Authorized representative Mr._____. _____(Signature) _____(Name) _____(Designation) pursuant to Resolution dated..... of its Board of Directors.  Preferred Bidder by the Hand of its Authorized representative Mr._____. _____(Signature) _____(Name) _____(Designation) pursuant to Resolution dated..... of its Board of Directors.

In the presence of

**Witnesses:**

- (i)
- (ii)

**Appendix I**

**Letter of Intent (LOI)**

This will be issued by GMDA to the 'Preferred Bidder' upon completion of bid evaluation Process and approval by the Competent Authority.

**Appendix II**

**“Project Location”**

[Location Map to be enclosed]

**Format for**  
**BANK GUARANTEE FOR PERFORMANCE SECURITY**  
(On requisite Stamp Paper)

In consideration of **Guwahati Metropolitan Development Authority** (hereinafter called "the Grantor") having agreed to exempt \_\_\_\_\_ (hereinafter called "the Authorisee) from the demand, under the terms and conditions of Letter of Intent (LOI) issued in respect of the "Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format" project on Design, Build, Finance, Operate and Transfer (DBFOT) and subsequent Authorisation Agreement being signed between Authorisee and the GRANTOR for performance of the Agreement to be made (hereinafter called "the said Agreement"), for the due fulfilment by the said Authorisee of the terms and conditions contained in the said Agreement, on production of a Bank Guarantee for Rs. \_\_\_\_\_ Crores (Rupees \_\_\_\_\_ Only).

We, \_\_\_\_\_ (hereinafter referred (indicate the name of the bank) to as "the Bank" at the request of Authorisee do hereby undertake to pay to the GRANTOR an amount not exceeding Rs. \_\_\_\_\_ Crores against any non fulfillment of the obligations of the Agreement or loss or damage caused to or suffered or would be caused to or suffered by the GRANTOR by reason of any breach of any terms and conditions contained in the said Agreement by the said Authorisee of any of the terms or conditions contained in the said Agreement.

We \_\_\_\_\_ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, hereby on a demand from the GRANTOR stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the GRANTOR by reason of breach of any terms and conditions contained in the said Agreement by the said Authorisee of any of the terms or conditions contained in the said Agreement or by reason of the Authorisee failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. \_\_\_\_\_.

We undertake to pay to the GRANTOR any money so demanded not withstanding any dispute or disputes raised by the Authorisee in any suit or proceeding pending before any court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment hereunder and the Authorisee shall have no claim against us for making such payment.

We, \_\_\_\_\_ (indicate the name of bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Corporation under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the GRANTOR certifies that the terms and conditions of the said Agreement have been fully and properly fulfilled/carried out by the said Authorisee and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before \_\_\_\_\_ (indicate the date till the validity of this BG from the date of signing Agreement), we shall be discharged from all liability under this guarantee thereafter.



We, \_\_\_\_\_(indicate the name of bank) further agree with the GRANTOR shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Authorisee from time to time or to postpone for any time or from time to time any of the powers exercisable by GRANTOR against the said Authorisee and to for bear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Authorisee or for any forbearance, act or omission on the part of the GRANTOR or any indulgence by the GRANTOR to the said Authorisee or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

This Guarantee will not be discharged due to the change in the constitution of the Bank or the Authorisee.

We, \_\_\_\_\_ (indicate the name of bank) undertake not to revoke this guarantee during its currency except with the previous consent of GRANTOR in writing. The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to GRANTOR sum of, Rs. \_\_\_\_\_without any protest or demur and upon receipt of first written demand from GRANTOR. This Guarantee is independent of the terms and conditions of the Authorisation Agreement and its validity.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ (Month & Year) for \_\_\_\_\_(indicate the name of the Bank).

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this \_\_\_\_\_ day of \_\_\_\_\_ and year first herein above written.

Signed and delivered by the above named \_\_\_\_\_ Bank by its Authorized Signatory as authorized by

Board Resolution passed on \_\_\_\_\_/Power of Attorney dated [.....]

\_\_\_\_\_

Authorized Signatory

Name :

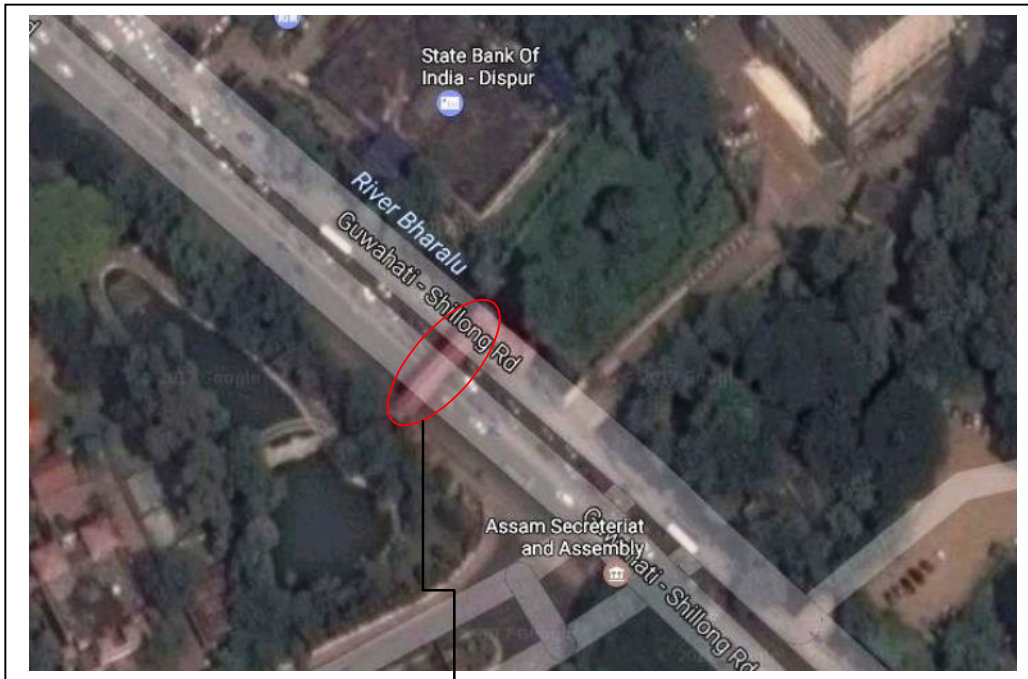
Designation:

In the presence of:

- 1.
- 2.



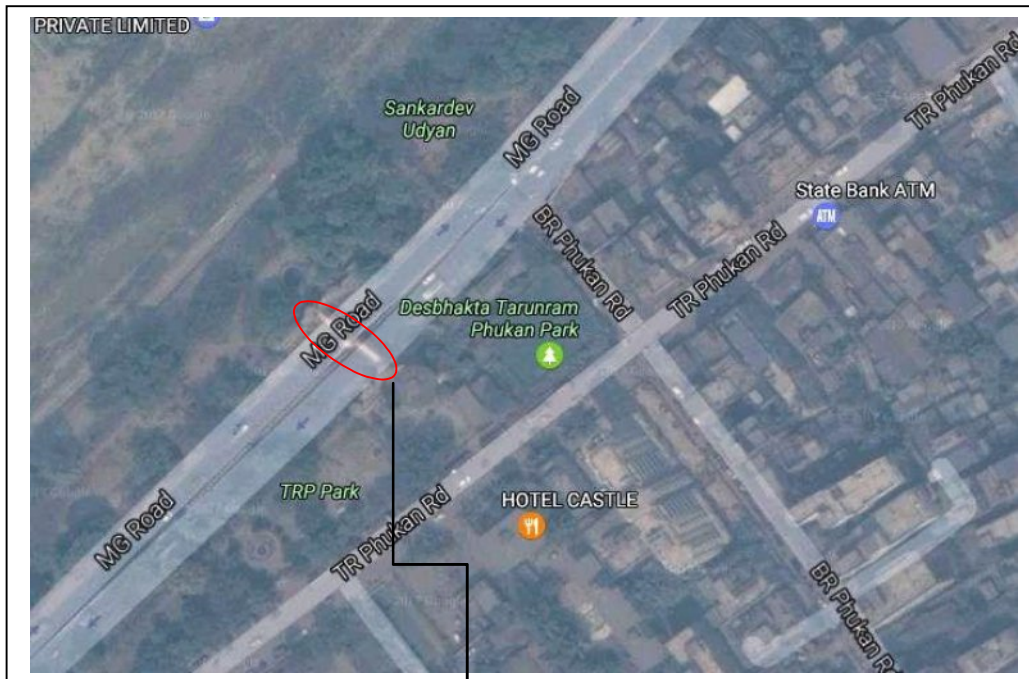
### LOCATIONS OF FOB'S



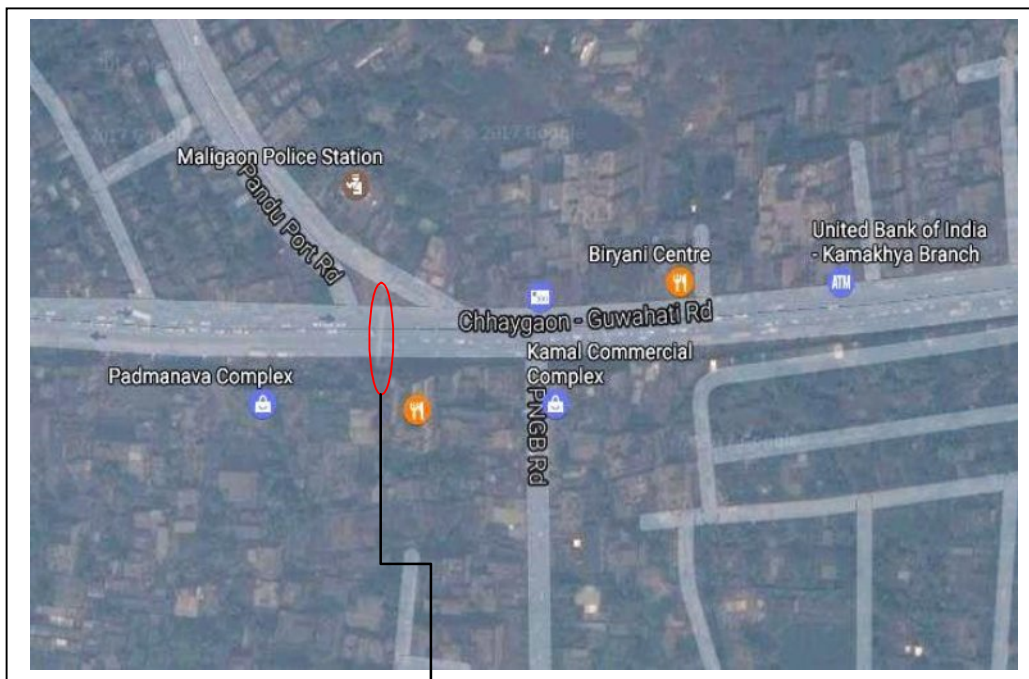
FOB on GS Road in front of Assam Secretariat



FOB at Lachit Nagar



FOB at Bharalumukh



FOB at Maligaon

**SECTION V  
COMMERCIAL BID**

**COMMERCIAL BID LETTER FORMAT  
(On the Letter Head of the Bidder)**

To  
The Chief Executive Officer  
Guwahati Metropolitan Development Authority  
Bhangagarh, Guwhati-5

**Sub: Submission of Financial Bid for “Installation of lifts & Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis.**

Being duly authorized to represent and act on behalf ----- and having reviewed and fully understood all requirements of bid submission provided in the RFP document and subsequent clarifications provided in relation to project, we hereby provide our Price Proposal to GMDA for the Authorisation period of 20 years exclusive of construction period for the following options.

We also hereby agree to pay to GMDA the Authorisation Revenue Share in Percentage quoted for the Authorisation period. We understand that in addition to the Revenue Share, we shall have to pay the Statutory Advertisement tax / charges to Guwahati Municipal Corporation or any other Department as per the applicable charges and revised from time to time.

We abide by the above offer/ quote as per terms of the RFP, if GMDA selects us as the Preferred Bidder. We also understand that, in case any differences between the quoted amount in words and figures, the amount written in ‘words’ will be considered as our quote towards Authorisation Revenue Share.

Yours faithfully,

\_\_\_\_\_  
(Signature of Authorised Signatory)  
(Name, Title, Address, Date)

**PRICE BID FORMAT**

**Name of Work:** “Installation of lifts and Maintenance of existing Foot over bridges in Guwahati on Public Private Partnership (PPP) Format” on Design, Build, Finance, Operate and Transfer (DBFOT) basis.

**Authorisation Period:** 20 years

Description of Work	Authorisation Revenue Share In Percentage	
	In Figure (%)	In Words
PPP Mode on DBFOT basis including Geotech Investigation, Design, Drawings, Construction etc. for Installation & Commissioning of lifts and Operation & Maintenance of existing Foot Over Bridges in Guwahati at various locations  i. Maligaon  ii. Lachit Nagar  iii. Bharalumukh and  iv. On GS Road in front of Assam Secretariat.		
<b>TOTAL</b>		

Signature & Seal of Tenderer