

Part III

Draft Concession Agreement

Draft Concession Agreement

between

Uttarakhand Livestock Development Board

acting through

(designation of authorised officer)

and

(Concessionaire)

for

Setting up Gau Vigyan and Prodyogiki Sansthan

at

Pashulok, Virbhadra, Rishikesh

This CONCESSION AGREEMENT made on this ----- (*insert date*) day of ----- (*insert month*), ----- (*insert year*) at ----- (*insert place of execution*),

BETWEEN

Uttarakhand Livestock Development Board, 233/1 Vasant Vihar, Dehradun - 248006, hereinafter referred to as “the Concessing Authority” or “ULDB” which expression shall unless repugnant to the context include the successors and assigns, on the one part

AND

-----, a company, having its registered office at _____, (or M/s _____ duly registered partnership firm), hereinafter referred to as “Concessionaire” which expression shall unless repugnant to the context include the successors and permitted assigns, on the other part.

WHEREAS,

ULDB with an objective to encourage, promote, carry out viably, all activities to improve the breeding and management of livestock in Uttarakhand, decided to appoint Private developer for Setting up Gau Vigyan and Prodyogiki Sansthan at Pashulok, Virbhadra, Rishikesh

- A. ULDB had, ten (10) acres of land at Pashulok, Virbhadra, Rishikesh.
- B. Pursuant thereto, after evaluating the aforesaid proposals, ULDB accepted the proposal submitted by the Concessionaire and issued Letter of Acceptance No. _____ (insert Letter No.) dated _____ to the Concessionaire requesting the Concessionaire to execute the Concession Agreement, which the Concessionaire has acknowledged by its Letter No. _____ dated _____.
- C. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :-

DEFINITIONS AND INTERPRETATION

ARTICLE 1

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 8.1.

“Agreement” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

“Applicable Permits” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

“Appointed Date” shall mean the date of this Agreement.

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

“Change in Law” shall have the meaning ascribed thereto in Clause 7.6.

“COD” or “Commercial Operations Date” shall mean the date on which the facility is operational

“Concession” shall have the meaning ascribed thereto in Clause 2.1 of this Agreement.

“Concession Period” shall have the meaning ascribed thereto in Clause 2.2.

“Defects Liability Period” means a period of twelve (12) months commencing on Taking over Date.

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility .

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 7.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“Government Agency” shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/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” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facility as set forth in Schedule 2.

“Operations Period” shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.

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

“Performance Security” shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Clause 4.1.

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

“Termination” shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“Termination Date” shall mean the date specified in the Termination Notice as the date on which Termination occurs.

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

“Tests” shall mean the tests to be carried out in accordance with the O&M Requirements and if not expressly specified in either of the said requirements in accordance with this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (g) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- (i) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;**
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by

any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;

- (m) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”)

Concession

ARTICLE 2

2.1. Nominee of Government of Uttarakhand in board of the Concession

The concession agreement is subject to the condition of Concessionaire agreeing to induct one nominee of Government of Uttarakhand/ ULDB in the board of directors/trusties.

2.2 Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessing Authority hereby grants and authorises the Concessionaire to set up Gau Vigyan and Prodyogiki Sansthan (hereinafter referred to as “the research centre”) in Pashulok, Virbhadra, Rishikesh, Uttarakhand and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement. (the “**Concession**”).

2.3 Concession Period

The Concession hereby granted is for a period of 30 years from the Appointed Date (hereinafter referred to as the “Concession Period”)

Provided, in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.4 Acceptance of Concessionaire

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

Project Site

ARTICLE 3

3.1 Handover of the Land

- (a) ULDB shall, within of 30 days from the Appointed Date, handover to the Concessionaire, vacant and peaceful physical possession of the land at Pashulok, Rishikesh.
- (b) Upon the land being handed over pursuant to the preceding Clause (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses development in the land as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site

- (a) The Concessionaire shall have the right to the use of provided land in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- (b) The representatives of Government of Uttarakhand and Government of India shall be allowed to visit the site at all times.
- (c) The land provided including the Project Facility developed thereon belongs to ULDB and shall continue to be the property of ULDB.
- (d) The Concessionaire shall not part with or create any encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- (e) The Concessionaire shall not without the prior written approval of ULDB use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (f) The ULDB shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as Concessionaire may specify.
- (g) Provided that such access or use shall not result in a Material Adverse Effect and that Concessionaire shall, in the event of any physical damage to the Project Site/ Project Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses.

3.3 Peaceful Possession

ULDB, as Concession Authority, hereby warrants that:

- (a) The Project Site together with the necessary right of way/ way-leaves
 - (i) has been acquired through the due process of law
 - (ii) belongs to and is vested in ULDB and that ULDB has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Concession Period/ completion of Handback Requirements. In the event, the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, ULDB shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable Permits

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project including approval of Building plan as per prevailing building bye-laws.

Concessionaire's Obligations

ARTICLE 4

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

4.1 Project Activities

- i. Designing, engineering, financing, construction, operation, maintenance and management of the facility during the Concession Period as per the minimum standard stipulated in Project Information memorandum (PIM) and Schedule 2 of this agreement.
- ii. Establish proper laboratory and production facilities as per the minimum standard stipulated in PIM and Schedule 2 of this agreement..
- iii. Procure all the required Clearances/ Approvals/ Environmental Clearances required for commencement of construction and operation.
- iv. Operation and Maintenance work of the Facility for the duration of the concession Period.
- v. Recruiting and managing scientific/technical and other staff as per the minimum standard stipulated in Project Information memorandum (PIM) and Schedule 2 of this agreement.
- vi. Obtaining required certification like GMP/GLP etc for the laboratories within one year of operation.
- vii. Compliance with all regulatory/legal requirements
- viii. Conducting research and production of panchagavya products.
- ix. Conducting training/courses in the area of panchagavya for farmers
- x. To achieve the Service Levels agreed with the Uttarakhand Government.
- xi. To set a logistics chain for collection of go-mutra and selling go-ark
- xii. Set up Go-Ark producing units across the State. The minimum production of Go-ark would be 10.00 Kilo Ltrs per day. (Annualised 30.00 Lakh Ltrs per annum)
- xiii. To create awareness among farmers, rural community and other stakeholders

4.2 Performance Security

- (a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to ULDB, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled nationalized bank acceptable to ULDB, in the form as set forth in Schedule 4, ("Performance Security") for a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only)
- (b) The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date.

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

4.3 Forfeiture of Performance Security

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

- (a) If the Successful Bidder withdraws from the project midway during the project term
- (b) Any other act or acts of the successful bidder which renders the project un-operational and ULDB establishes sufficient reasons to forfeit the performance guarantee.

4.4 Financing Arrangement

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

4.5 Project Implementation

- (a) Unless otherwise permitted by ULDB, no Construction Works which is outside the scope of Project activities shall be carried out in the Project site
- (b) The Concessionaire shall provide the building plan to ULDB before submission of the same to the approving authorities. Upon written consent by ULDB, the Concessionaire will submit the same to the appropriate authorities for sanctioning of the plan.
- (c) The Concessionaire shall make arrangements for adequate and timely supply of electricity, water, and other utilities required for operating the facility and ULDB shall be in no way responsible for the same.
- (d) During Operating Period, the Concessionaire shall be responsible for keeping unauthorized persons off Project Site, and authorized persons shall be limited to the employees of the Concessionaire, persons authorized by ULDB and bonafied visitors holding temporary visitors' pass issued by the Concessionaire.
- (e) The Concessionaire shall, before commencement of operation ensure to have requisite organisation and designate and appoint suitable medical professional as it may deem appropriate to supervise the Project, to deal with the ULDB and to be responsible for all necessary exchange of information required pursuant to this Agreement;

4.6 Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the building and machines in accordance with the O&M Requirements in terms of Schedule 2.
- (b) The Concessionaire may undertake maintenance of the Project Facility through the supplier of the plant & machinery and would not allow any unauthorized firm/personnel to have access to the plant & machinery.
- (c) The Concessionaire shall, during the Operations Period :
 - (i) shall have requisite organization and designate and appoint suitable technical and non technical staff as it may deem appropriate to operate the Project Facility, to deal with the ULDB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) shall, for the purposes of determining that the Project Facility is being maintained in accordance with the O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the machine suppliers.

- (d) In the event the Concessionaire has failed to operate and maintain the Project Facility in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the ULDB (“Notice to Remedy”), ULDB may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by ULDB on account of such repair and maintenance within fifteen (15) days of receipt of ULDB’s claim thereof.
- (e) The Concessionaire shall be deemed to be in material breach of O&M Requirements, if ULDB, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,
 - (i) the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
 - (ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof is not safe for operations;

For avoidance of doubt, persistent breach shall mean :

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the ULDB;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the ULDB requiring the Concessionaire to remedy a breach, and
- (iii) Repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of Material Breach of O&M Requirements, ULDB shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, be entitled to terminate this Agreement.

4.7 Patents

- i. The Concessionaire shall transfer rights of use of all the patents developed during the project term to ULDB or any other agency nominated by ULDB.
- ii. The Concessionaire will not sell the patents to any other party, including its own companies/organizations without the written permission of ULDB.

4.8 Insurance

- (a) The Concessionaire shall, in accordance to Good Industry Practice, at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period, such insurance as are necessary including but not limited to the following:
- (i) comprehensive third party liability insurance including injury or death to Concessionaire's personnel / representatives, workmen's compensation insurance;
 - (ii) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(b) **Evidence of Insurance**

The Concessionaire shall maintain a register of entry in order of premium paid towards the Project Facility and proof of payments made shall be submitted to ULDB whenever requested for.

(c) **Validity of Insurance**

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to ULDB in writing.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, ULDB would not be liable for any claims of damages from Concessionaire's employees/representatives in the event of any untoward happenings.

Before handing over the facility on the expiry of the project term, the Concessionaire shall keep the insurance valid for a further period of one year.

(d) **Un-insurable Risks**

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/ re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

4.9 Environmental Compliance

The Concessionaire shall, ensure that all aspects of the Project Facility during the Concession Period and processes employed in the construction, operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

4.10 Sub-license of Project Facility

The Concessionaire shall not enter into License Agreement/s for the occupation and use of Project Facility with any other party.

4.11 Concession Payment

- (a) The ULDB agrees to make to Concessionaire payment or Concessionaire agrees to pay to ULDB (as the case may be) in accordance with Schedule 1 (“Payment to Concessionaire/ULDB”).
- (b) The Payment shall be made by way of cheque in favour of the Concessionaire or ULDB, as the case may be.
- (c) The Concession Fee shall be paid within 30 days of the raising the claim.

4.12 General Obligations

The Concessionaire shall at its own cost and expense:

- (a) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (b) comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;
- (c) ensure and procure that each Project Agreement contains provisions that would entitle ULDB or a nominee of ULDB to step into the same at ULDB's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement ;
- (d) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project ;
- (e) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies ULDB against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall ULDB be treated as employer in this regard;

- (f) be responsible for all the health, security, environment and safety aspects of the Project Site/ Project Facility, as the case may be, at all times during the Concession Period;
- (g) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (h) upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of ULDB for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- (i) pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period.
- (j) keep on the Project Site two complete sets of this Agreement, approvals given by the ULDB and any other communication given or issued under provisions hereof for inspection, verification and use by the ULDB or any authority authorised by law to inspect the same or any of them.
- (k) provide and maintain all necessary accommodation and welfare facilities for its staff and labour. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Construction Works.
- (l) take precautions to ensure the health and safety of its staff and labour.
- (m) employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the contract. The ULDB may require the Concessionaire to remove any person employed on the Project who in the opinion of ULDB:
 - (i) persists in any misconduct,
 - (ii) is incompetent or negligent in the performance of his duties,
 - (iii) fails to conform with any provisions of the Agreement, or
 - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment

The Concessionaire shall in such cases appoint suitable replacement/s.

- (n) Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and to preserve peace and protection of persons and property in the neighborhood of the project site against such conduct.

4.13 No Breach of Obligations

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

- (i) Force Majeure Event, subject to Clause 7;
- (ii) ULDB Event of Default;
- (iii) Compliance with the instructions of the ULDB or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

4.14 Access and Assured Availability of the Project Facilities

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to ULDB / Person nominated by ULDB.

4.15 Erection of Sign Board

- (a) The Concessionaire shall erect a signboard, of a size not less than 2 ft. by 4 ft, adjacent to the main entrance to the Project Site in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall prominently display the following text in black upper case letters on a white/yellow background:

“This property belongs to the Uttarakhand Livestock Development Board, Government of Uttarakhand and has been handed over to _____ (*name of the Concessionaire*) for Build, Operate and Transfer from _____ (*Insert the in Appointed Date*) to _____ (*Insert the Expiry Date*)”.

- (b) The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

4.16 Advertisement / Hoarding

The Concessionaire shall not permit/ allow advertisement/ hoarding or any commercial activity other than those which are part of this project, in the project site.

ULDB's Obligations

ARTICLE 5

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

5.1 Specific Obligations

- (a) ULDB shall handover the possession of the Project Site to the Concessionaire in accordance with the Agreement;
- (b) Prior to handover of the Project Site to the Concessionaire, ULDB shall remove all articles etc

5.2 General Obligations

ULDB shall:

- (a) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- (b) Observe and comply with all its obligations set forth in this Agreement.

5.3 Monitoring and Assessment

- (a) ULDB, in consultation with Government of Uttarakhand, shall set up a program monitoring mechanism including an Expert Committee comprising of domain experts from government, research institution, industry and academia, to periodically monitor the project deliverables, including research outputs.
- (b) Since the research outputs in terms of patents, basic and application research papers for academic/industry/animal husbandry, are the prime deliverables of the entire project, the expert committee would evaluate the efforts and outputs of research activities by the concessionaire.
- (c) The expert committee shall submit its report to the government regarding the achievement of projects deliverables - low, moderate, satisfactory, excellent etc with specific recommendation(s) on continuance/discontinuance/restructuring of the project. The findings of the expert committee would be considered to be final and binding.
- (d) If the project deliverables - research and industry related are found to be moderate or low, the expert committee would direct ULDB to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs within definite time lines.

- (e) The expert committee shall evaluate project deliverables on a six monthly basis based on field visits, review of auditors' reports, reports provided by concessionaire, information received from general public including project stakeholders etc.
- (f) ULDB shall facilitate the expert committee in information gathering, conducting field visits, meetings, interviews etc.

Government Support

ARTICLE 6

6.1 Government Support

- (a) Subject to the provisions of this Agreement and Applicable Law, in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms and conditions set forth in this Agreement, the Concessionaire shall be entitled to receive the government grant from ULDB in accordance with Schedule 1 or ULDB shall be entitled to receive payment from the Concessionaire, as the case may be.

Force Majeure and Change In Law**ARTICLE 7****7.1 Force Majeure Event**

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

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

7.2 Obligations of the Parties

- (a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
 - (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated duration of the Force Majeure Event;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 8.2 (a), the Parties along, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
 - (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure Event and,
 - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

- (c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

7.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 7.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event

- and to restore the Project Facility , in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

7.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Clauses 7.1(a) to 7.1(e) and 7.1(i), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in 7.1 (f), 7.1 (g) or 7.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 7.1 (f), 7.1 (g) or 7.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Provided further, ULDB may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 7.1(f), 7.1(g) or 7.1(h).

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 7.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

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

(c) Obligation of Parties

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

- (i) The Project Facility is handed back to ULDB by the Concessionaire on the Termination Date free from all Encumbrances.

7.5 Liability for other losses, damages etc.

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

7.6 Change in Law

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

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

Provided that Change in Law shall not include:

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

- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur additional Costs, ULDB shall not reimburse any such costs
- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify ULDB of the following:
 - (i) the nature and the impact of Change in Law on the Project
 - (ii) in sufficient detail, the estimate of the additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost

Events of Default and Termination

ARTICLE 8

8.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or ULDB Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Clause 7;

- (i) At any time during the Concession Period, the Concessionaire fails to adhere to the O&M Requirements and has failed to remedy the same within 60 days;
- (ii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the O&M requirement as mentioned in 4.1 and schedule 2 of this agreement and the same has not been remedied for more than 60 days ;
- (iii) If the concessionaire fails to achieve the project outputs - research & Industry related as evaluated by the expert committee (refer 5.3 c) and fails to implement corrective action and show improvements in the project outputs within definite time lines given by ULDB (refer 5.3 d).
- (iv) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (v) A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- (vi) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of ULDB, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (vii) The Concessionaire has abandoned the Project Facility ;
- (viii) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

- (ix) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days

(b) **ULDB Event of Default**

Any of the following events shall constitute an event of default by ULDB ("ULDB Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) ULDB is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice thereof issued by the Concessionaire;
- (ii) ULDB having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire
- (iii) ULDB has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) ULDB has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (v) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- (vi) Any representation made or warranties given by the ULDB under this Agreement has been found to be false or misleading.

8.2 Termination due to Event of Default

(a) **Termination for Concessionaire Event of Default**

- (i) Provided that upon the occurrence of a Concessionaire Event of Default as specified under Clause 8.1, ULDB may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 8.2(c).
- (ii) Based on the findings and recommendation of the expert committee as mentioned in 5.3, ULDB may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 8.2(c).

- (iii) If ULDB decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to ULDB in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, ULDB shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iv) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated thereof, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, ULDB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

(b) Termination for ULDB Event of Default

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

(c) Early Termination

- (i) ULDB reserves the right to proceed for early termination of the agreement on specific recommendation of Government of Uttarakhand in "public interest".
- (ii) Notwithstanding anything inconsistent contained anywhere in this agreement, in the event of early Termination of this

Agreement by ULDB without the consent of the Concessionaire or in the absence of any default by the Concessionaire, the procedure for Termination prescribed in the preceding sub articles shall not apply.

- (iii) In such an event, the Concessionaire shall be entitled to receive from ULDB, termination Payment specified in the following sub-article (8) (c) (iv).
- (iv) In the event of early termination, the Concessionaire shall be entitled to receive value of the investment on fixed asset incurred by the Concessionaire along with a simple interest of 9% per annum calculated from the time of investment till the time of termination.
- (v) ULDB shall not be responsible for paying any liabilities outstanding on Concessionaire towards suppliers' payment, statutory government payment, employees' salary/perks etc.

(d) **Termination Notice**

If a Party becomes entitled to do so decide to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

(e) **Obligation of Parties**

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

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- (ii) the termination payment, if any, payable by ULDB is paid to the Concessionaire on the Termination Date and
- (iii) the Project Facility is handed back to ULDB by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to ULDB.

(f) **Withdrawal of Termination Notice**

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

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

8.3 Rights of ULDB on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, ULDB shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
- (i) enter upon and take possession and control of the Project Site / Project Facility forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Site /Project Facility;
- (b) Notwithstanding anything contained in this Agreement, ULDB shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to ULDB shall be free from any such obligation.

8.4 Accrued Rights of Parties

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

Hand back Requirements

ARTICLE 9

9.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Concessionaire, shall at all times remain that of ULDB.

9.2 Obligations of Parties

(a) Concessionaire's Obligations

- (i) The Concessionaire shall on the date of expiry of the Concession Period, hand back peaceful possession of the Project Facility to ULDB free of cost and with all plant and machinery in good operable condition.
- (ii) At least 12 months before the expected expiry of the Concession Period a joint inspection of the Project Facility shall be undertaken by ULDB and Concessionaire. ULDB shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of jobs ("Project Facility Handback Requirements"), if any, to be carried out so as to conform to the O&M Requirements. The Concessionaire shall promptly undertake and complete such jobs at least 3 months prior to the expected expiry of the Concession Period and ensure that the Project Facility continues to meet such requirements until the same are handed back to ULDB.
- (iii) ULDB shall, within 15 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to ULDB along with the Project Facility.
- (iv) The Concessionaire hereby acknowledges ULDB's rights specified in Clause 9.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

9.3 ULDB's Obligations

ULDB shall, subject to ULDB's right to deduct amounts towards:

- (i) carrying out works/jobs listed, which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to ULDB along with the Project Facility.

Dispute Resolution

ARTICLE 10

10.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- (b) Either Party may require such Dispute to be referred to the Chief Executive Officer, ULDB and the Director of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.2 below.

10.2 Arbitration

(a) **Procedure**

Subject to the provisions of Clause 10.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation if the other party fails to appoint its arbitrator or if two arbitrators appointed by each party fail to appoint the third arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with The Arbitration and Conciliation Act 1996

(b) **Place of Arbitration**

The place of arbitration shall ordinarily be Dehradun but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(c) **English Language**

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

(d) **Enforcement of Award**

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

(e) **Performance during Arbitration**

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

Representations and Warranties, Disclaimer

ARTICLE 11

11.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to ULDB that :

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from ULDB of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site/Project Facility shall pass to and vest in ULDB on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or ULDB;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ULDB or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by ULDB, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (n) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that ULDB shall not be liable for the same in any manner whatsoever to the Concessionaire.

11.2 Representations and Warranties of ULDB

ULDB represents and warrants to the Concessionaire that:

- (a) ULDB has full power and authority to grant the Concession;
- (b) ULDB has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes ULDB's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against in respect of the Project, Project Site or Project Facility.

11.3 Obligation to Notify Change

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

12.1 Procedure for Appointment

- (a) ULDB shall within 15 days hereof forward to the Concessionaire a list consisting of the names accompanied by their respective profiles in brief, of atleast five Persons who have the necessary expertise and are willing to act as Project Engineer for the Project. The scope of services for the Project Engineer is set out in Schedule 3.
- (b) Within 15 days of receipt of the list forwarded by ULDB, the Concessionaire shall submit to ULDB names of three Persons from the list, together with its consent for appointment of any one of the three Persons as the Project Engineer.
- (c) Within 30 days of receipt of the names forwarded by the Concessionaire, ULDB shall, in consultation with the Concessionaire, finalise the terms of appointment of the Project Engineer. ULDB shall, select one of the persons from the list sent by the Concessionaire and jointly along with the Concessionaire appoint the selected person and enter into a tripartite agreement. The scope of work of the Project Engineer shall include that set out in Schedule 3.
- (d) The initial term of the Project Engineer shall extend upto 2 years after COD, after which, the Concessionaire and ULDB shall mutually agree to do any one of the following;
 - (i) renew / extend the services of the Project Engineer, the term of which shall not exceed a period of two years at a stretch; or
 - (ii) not renew the term or not engage a Project Engineer for the rest of the Concession Period.

12.2 Payments to Project Engineer

- (a) All fees, costs, charges and expenses payable to the Project Engineer in accordance with the terms of its appointment (collectively “the Remuneration”) shall be borne by the Concessionaire.
- (b) The Project Engineer shall, simultaneous to submission of its invoice to the Concessionaire for payment of the Remuneration (hereinafter referred to as “Project Engineer Invoice”), submit a copy of the same to ULDB for its approval. Within 7 days of receipt of the same, ULDB shall respond in writing to the Concessionaire and the Project Engineer communicating either,
 - (i) ULDB’s consent for payment of the Remuneration (“ULDB Consent”), or
 - (ii) ULDB’s non-approval of the Project Engineer Invoice, clearly stating the reason/s for such non-approval.
- (c) In case of non-approval, the Project Engineer shall revise such invoice to the extent necessary and resubmit the same to ULDB and the Concessionaire. ULDB shall give its observations and comments,

if any, within 15 days of receipt of such revised invoice, which shall be taken into account by the Concessionaire while finalising the payment to the Project Engineer.

- (d) The Concessionaire shall make payment to the Project Engineer within 10 working days of receipt of ULDB Consent. In case, ULDB does not respond, in the manner set out in Clause 4.2(b) & 4.2(c) above, then ULDB Consent shall be deemed to have been granted and the Concessionaire shall pay the Project Engineer as specified hereinabove.

12.3 Replacement of the Project Engineer

- (a) The Parties may replace the Project Engineer in any of the following circumstances by giving a 30 days written notice :
 - (i) If, ULDB or the Concessionaire has reason to believe that the Project Engineer has not discharged its duties in a fair, appropriate and diligent manner;
 - (ii) if, in accordance with the terms of its appointment the Project Engineer resigns or notifies its intention not to continue as the Project Engineer;
 - (iii) any other circumstance which in the opinion of the Parties warrants replacement of the Project Engineer.
 - (iv) if ULDB decides not to renew the term of the Project Engineer.
- (b) Subject to the attendant circumstances and unless the Parties otherwise agree, the procedure laid down in Clause 4.1 shall, as far as possible, be adhered to for replacement of the Project Engineer and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Construction Requirements and O&M Requirements.

13.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of ULDB.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/ Project Facility, except with prior consent in writing of ULDB, which consent ULDB shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

13.2 Governing Law and Jurisdiction

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

13.3 Waiver

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

13.4 Survival

Termination of this Agreement:

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

13.5 Amendments

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

13.6 Notices

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

If to ULDB:

The Chief Executive Officer
Uttarakhand Livestock Development Board
233/1 Vasant Vihar
Dehradun - 248006.

If to the Concessionaire:

The Director,

-----*(insert complete address with phone and fax details)*

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 recognised international 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.

13.7 Severability

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

13.8 No Partnership

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

13.9 Language

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

13.10 Exclusion of Implied Warranties etc.

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

13.11 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ULDB by:

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)

(Designation)

Payment to Concessionaire/ULDB

SCHEDULE 1

- 1.1 Based on the outcome of the bid, the Concessionaire will either be paid lumpsum or annuities by ULDB, in case of positive grant being offered by the winning bid,

OR

- 1.2 the Concessionaire will pay to ULDB, the lumpsum or annuities as per the outcome of the bid, in case of negative grant bid being offered by the winning bid.

2. Site

A land measuring 10 acres is available with the Government for this project at Pashulok, Virbhadra, Rishikesh. This land would be leased by the Government of Uttarakhand on long term or leave-license basis and the selected Private Operator would be invited to build the Cow Research & Education Centre on BOT basis.

2.1 Building

2.1.1 For the design of the Gau Vigyan Prodyogiki Evam Anushandhan Sansthan, following are the main activity zones for which the design and construction needs to be completed by the Concessionaire.

1. Administrative Wing
2. Research Facility
3. Academic Wing including Library
4. Panchgavya products manufacturing facility
5. Museum
6. Cow Shed and grazing area

2.1.2 Details of proposed facilities

The tentative area for various activity zones has been estimated as under. The Selected operator is free to make changes and discuss the same with ULDB before finalization. **The below mentioned built up area are the minimum which the Concessionaire needs to build.**

Summary of Area (Sq Mtrs)

S No	Description	Coverage	FAR	Builtup	Floors	Area/floor	Open Area	Total
1	Administrative Office	60%	1.5	1,516	3	505	337	842
2	Laboratory	60%	1.5	1,253	3	418	278	696
3	Library	60%	1.5	546	3	182	121	303
4	Cow Sheds and Museum					33,628	33,628	33,628
5	Manufacturing Unit	60%	1.5	345	3	115	77	192
6	Green Area					4,796	4,796	4,796
	TOTAL			3,660		39,644	39,237	40,457

Total Land 10.00 Acres

The Details of above activity zones are as under:

Administrative Office

S.No	Description	Numbers	Unit Area	Total Area
			Sq Mtr	Sq Mtr
1	Director Office	1	28	28
2	P.S Office	1	14	14
3	Sr Scientist Room	6	20	120
4	Scientist Room	10	20	200
5	Research Associate Room	16	18	288
6	Office	1	28	28
7	Open Air Theatre	1	63	63
8	Exhibition Hall	1	88	88
9	V.I.P Lounge	1	36	36
10	Toilets	10	5	45
11	Cafeteria	1	100	100
12	Passages/Staircase etc	50%		505

1,516

Laboratory

1	Laboratory	4	64	258
2	Lab Incharge	4	10	42
3	Lab Office	1	12	12
1	Demonstration room	2	70	140
2	Hall	2	120	240
4	Store	1	9	9
5	Store II	2	3	6
6	Equipment Store	1	10	10
7	Record Store	1	12	12
8	Record Room	1	14	14
9	Retiring Room	1	9	9
10	Test Animal	4	3	12
11	Central Workshop	1	50	50
12	Toilets	5	5	23
13	Passages/Staircase etc	50%		418

1,253

Library

1	Reading Hall	1	80	80
2	Committee Hall	1	88	88
3	Stack Area	1	57	57
4	Binder Section	1	20	20
5	Room for the librarian	1	18	18
6	Issue/collection desk	1	18	18
7	Photocopy Room	1	15	15
8	Video & Cassette	1	50	50
9	Toilets	4	5	18
10	Passages/Staircase etc	50%		182

546

Cow Sheds and Museum

1	Museum	1	250	250
2	Open Cow Sheds	1	500	500
3	Closed Cow Sheds	1	500	500
4	Mini Cattle Feed Store	1	10	10
5	Cow Grazing Area	1	16,184	16,184
6	Fodder growing Area	1	16,184	16,184

33,628

Manufacturing Unit

1	Raw Material Store	1	15	15
2	Manufacturing Area	1	100	100
3	Quality Control Laboratory	1	15	15
4	Packing Section	1	50	50
5	Finished Goods Store	1	15	15
6	Office	1	20	20
7	General Store	1	15	15
8	Passages/Staircase etc	50%		115

345

2.2 Site Development related specifications

- i. The developer should provide landscaping, internal road network and parking areas within the site.
- ii. The internal paving to be a combination of black top/concrete road, concrete paving blocks, interlocking paving blocks, landscaped garden and green areas

2.3 Civil and Structural Requirements

- i. The buildings shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces.
- ii. RCC structures shall be designed as per IS 456: 2000
- iii. Steel structures shall be designed in accordance with the provisions of IS 800- 1984. Structural steel shall conform to IS 2062. Tubular sections would conform to IS- 4923. Structural joints shall conform to IS 4000:1992.

- iv. Developer is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.

2.4 Air Conditioning

The facility shall be provided with Air-Conditioning as per the relevant standards and specifications of NBC, BIS and other recognised international standards.

2.5 Signages

The developer shall provide signages so as to facilitate necessary information to the visitors regarding amenities and their location. The signages would be provided separately for information signs, facility signs, and other signs.

2.6 Parking Area

- i. Provision of Car parking (in covered/ open), (Conventional /Mechanical) shall be made, as per Local Bye-Laws.
- ii. The Minimum bay dimensions per car space shall be 5.2 m long and 3.25 m wide for basement parking and above ground parking facilities.
- iii. Minimum carriageway of pavement for circulation space within parking facilities shall be 4 m if one way and 6 m if two way.
- iv. All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.

2.7 Fire fighting Facilities

The Developer shall provide the required fire fighting equipment and facilities including fire exits, fire proof doors, etc conforming to the relevant standards and the applicable rules and regulations.

2.8 Sump Tank and Overhead Tank

The Concessionaire shall provide adequate underground/overhead tanks of adequate capacity as per the requirements of the Project Site. Underground tanks shall be of RCC construction.

2.9 Operations and Management Requirements

- 2.9.1 The Concessionaire shall comply with the O&M Requirements set out in this Schedule. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the standards and specifications as set out in the operating manual and other relevant standards.
- 2.9.2 The Concessionaire shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical and electrical works and equipment, furniture for meeting the specified performance standards as given below.

S No	Serviceability indicator	Required Service Level	Permissible Time Limit for repairs/rectifications
1	Boundary Wall shall be without Damage or Breach	Nil	Any damage / breach to the boundary wall shall be rectified within three (3) days of detection.
2	There shall be no standing water on pavement surface or in the centre	Nil	Immediate measures to be taken and water logging should be cleared within four hours.
3	All Toilets and bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of time.	Toilets/Urinals/bathrooms shall be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done at least twice daily
4	All Information Signage and Display Boards shall be visible, legible and functional.	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of its detection
5	Staircases shall be clean and functional	Nil	The staircases shall be cleaned at least four times a day. Damaged handrails, risers or treads shall be repaired within three days of detection.
6	Illumination (Lighting) shall be functional	To meet the required illumination level as per national standards	The ventilators, skylights, etc and other luminaries for artificial lighting shall be cleaned once in seven days to maintain the illumination level.

S No	Serviceability indicator	Required Service Level	Permissible Time Limit for repairs/rectifications
7	Defects in Electricity gadgetry like bulbs/ lamp shades/ wiring/ etc		Temporary measures in 4 hours and permanent restoration within 3 days
8	Defects in all other utilities like water tap/ tap connections / pipe/ sewer and drainage pipes/ tanks & overflow/ glasses/ window panes/ other building furniture		Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work.
9	Fire Fighting Equipments shall be functional	Nil	<p>Any damage to firefighting equipment in the facilities and in public spaces shall be rectified within two days of detection.</p> <p>Fire extinguishers shall be replaced before the end of its expiry date.</p> <p>The water tank meant for firefighting purpose shall remain flooded with water to its capacity at all the times.</p>
10	Water Tank shall be clean and functional		Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place.

The Cow shed and grazing area should always be kept clean without any water logging, cow dung or any other waste products.

2.10 Periodic Maintenance Performance Standards

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project as under:

S No	Periodic Renewal Activities	Time limit for renewal
1	Repainting of furniture, signages delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in three years
3	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc in the offices, cabins, booths etc.	Minimum once in three years
4	Mechanical Equipment	Minimum once in a year as per manufacturer's installation , operation & maintenance instruction manual
5	Electrical Equipment	Minimum once in a year as per manufacturers' installation, operation & maintenance instruction manual

2.11 During the Concession Period, the Concessionaire shall ensure that :

- (i) Project Facility is kept free from undue deterioration and undue wear;
- (ii) applicable and adequate safety measures are taken;
- (iii) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
- (iv) disturbance or damage or destruction to property of third party by operations of the Project Facility is controlled/minimised;
- (v) members of the public are treated with due courtesy and consideration by its employees/ agents;
- (vi) a complaint register to record grievances of any member of the public in relation to the operations of the facility
- (vii) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O&M Requirements.

2.12 Human Resources

The selected private partner would select and retain adequate number of scientific and support staff for smooth operation of the center. The private partner would ensure good working environment and pay remuneration commensurate with qualification and experience without any discrimination on gender and caste.

Research Staff

The minimum number of scientific staff required to be hired is as under:

S No	Description	Numbers
1	Director	1
2	Chief Scientists	2
3	Sr Scientists	4
4	Scientists	15
5	Post Doctoral Fellow	2
6	Sr Research Associate	8
7	Jr Research Associate	8
8	Lab Technician	8
9	Lab Assistant	8
10	Lab Worker	10

The above numbers are minimum indicative. Based on the number and type of research projects the numbers may increase. The support staff would be additional to the above indicated.

Industrial Staff

The staff required for operating and managing the “gau-ark” manufacturing units would be at least one (1) operator and two (2) helpers for each 30 Ltrs per hour capacity unit.

Production Level of Go-Ark

The minimum production of Go-ark would be 10.00 Kilo Ltrs per day. (Annualised 30.00 Lakh Ltrs per annum).

Scope of Work of Project Engineer

SCHEDULE 3

3.1 Role of the Project Engineer

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

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

3.2 Scope of Services

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

3.3 Implementation Period - Design and Planning

Review of the following submitted by the Concessionaire:

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

3.4 Implementation Period - Construction

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

- (i) monitor the progress in implementation of the Project based on the Implementation/ Construction Plan submitted by the Concessionaire;

- (ii) review and approve the material testing and mix designs results and recommend special tests, where required, for materials and/or completed works, require removal/substitution of unsuitable materials and /or works and report deficiencies in respect of the same to ULDB;
- (iii) review and monitor the quality assurance and quality control procedures followed by the Concessionaire;
- (iv) review the manpower and equipment deployed by the Concessionaire;
- (v) monitor the Construction Works for conformity with the Project Requirements (including rehabilitation of the existing road);
- (vi) verify the 'As-Built' drawings for each component of the works prepared by the Concessionaire and require removal of deficiencies found therein;
- (vii) review the safety and environment measures implemented;
- (viii) review and ascertain the cost variation arising as a result of Change in Law and determine the Additional Cost;
- (ix) require, monitor and review the results of Tests to be carried out by the Concessionaire in accordance with the Construction Requirements and/or O&M Requirements;
- (x) require suspension of whole or any part of the Construction Works if in its reasonable opinion the same does not conform to the Construction Requirements;
- (xi) issue Provisional Certificate and/or Completion Certificate in accordance with the applicable provisions of the Agreement; and
- (xii) review and assist in finalisation of the O&M Manual and first annual O&M Plan prepared by the Concessionaire.

3.5 Operations Period

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

- (i) review the O&M Plans submitted by the Concessionaire from time to time and assist the Concessionaire in finalising the same;
- (ii) monitor O&M activities (including maintenance of equipment, standards of service, traffic management, safety and environmental issues) and the overall quality of O&M activities so as to ensure

compliance by the Concessionaire with the O&M Requirements, O&M Plan and O&M Manual;

- (iii) periodically review the O&M Manual for adequacy;
- (iv) inspect the Project Facilities at least once a month and as and when exigencies require to ascertain conformity with Project Requirements;
- (v) review and ascertain the cost variation arising as a result of Change in Law and determine the Additional Cost;
- (vi) undertake a quarterly review of the various records and registers to be maintained by the Concessionaire (including the records relating to complaints and accidents) and suggest suitable remedial measures/ procedures, where necessary.

3.5.2 In the event of Emergency, the Project Engineer shall assist the Concessionaire in dealing with the same and if necessary require or permit, as the case may be, the Concessionaire to take such appropriate steps or measures including where necessary decommissioning of any Project Facilities.

3.6 Hand back of Project Facilities to ULDB

- 3.6.1 At the time of handing back the Project Facilities to ULDB at the end of Concession Period, the Project Engineer shall :
- (i) monitor and certify compliance with project facility Hand back Requirements and
 - (ii) issue a Certificate of Compliance with project facility Hand back Requirements to the Concessionaire.

3.7 Breach of Obligations

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

3.8 Meetings, Records and Reporting

- (a) The Project Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the Construction Period and once every two months during the Operations Period as also to participate in emergency or extra-ordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.

- (b) The Project Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
- (i) Manpower deployed and other organizational arrangements of the Project Engineer;
 - (ii) Reviews of documents submitted to it by the Concessionaire to meet Project Requirements, such as manuals, Drawings, As-Built drawings, schedules, plans and reports;
 - (iii) Inspections undertaken and notices/instructions issued to the Concessionaire;
 - (iv) Review of compliance with Project Requirements;
 - (v) Tests;
 - (vi) Change in Law;
 - (vii) Emergency (including accidents);
 - (viii) Force Majeure Events;
 - (ix) Breaches and defaults by the Parties;
 - (x) Project Facility Handback Requirements
- (c) The Project Engineer would be required to submit the following reports to the Parties during the Concession Period :
- (i) Implementation / Construction Period
 - Monthly Progress Report (including details of slippages and remedial measures)
 - Report on Tests and report on notices Issued
 - Completion Certificate (including Provisional Certificate)
 - Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations).
 - Any other report as may be reasonably required by ULDB or as may be necessary to give effect to the provisions of the Agreement.
 - (ii) Operations Period
 - Monthly O&M Report
 - Report on Tests and report on notices Issued
 - Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations)
 - Annual Review of O&M Manual
 - Any other report as may be reasonably required by ULDB or as may be necessary to give effect to the provisions of the Agreement.
 - (iii) Report on Project Facility Hand back Requirements.
 - (iv) Any other report as may be reasonably required by ULDB or as may be necessary to give effect to the provisions of the Agreement.

Performance Security

SCHEDULE 4

(Proforma of Bank Guarantee)

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

In favour of

Uttarakhand Livestock Development Board, represented by _____ and having its office at 233/1 Vasant Vihar, Dehradun - 248 006, hereinafter referred to as “ULDB”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between ULDB and _____, a company, having its registered office/ permanent address at _____ (“the Concessionaire”), the Concessionaire has been granted the Concession to Setting up Gau Vigyan and Prodyogiki Sansthan at Pashulok, Virbhadra, Rishikesh, for a period of 30 years (hereinafter referred to as “the Project”).
- B. In terms of Article 4.2 of the Concession Agreement, the Concessionaire is required to furnish to ULDB , an unconditional and irrevocable bank guarantee for an amount of Rs 50,00,000.00 (Rupees Fifty Lakhs only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to Project by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

- 1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
- 2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project and in connection with achieving the project objectives by the Concessionaire in accordance with the Concession Agreement.

3. The Guarantor shall, without demur, pay to ULDB sums not exceeding in aggregate Rs.50,00,000.00 (Rupees Fifty Lakhs only), within Seven (7) calendar days of receipt of a written demand therefor from ULDB stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by ULDB and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, ULDB shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by ULDB or any indulgence shown by ULDB to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by ULDB or any indulgence shown by ULDB , provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ unless discharged/ released earlier by ULDB in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 50,00,000.00 (Rs Fifty Lakhs Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

Format for Letter of Authorisation

SCHEDULE 5

(To be given on ULDB letterhead)

To Whomsoever It May Concern

This is to confirm that to pursuant to the Concession Agreement dated _____, entered into between the ULDB and _____ (“the Concessionaire”), the Concessionaire has been authorised to Setting up Gau Vigyan and Prodyogiki Sansthan, Operate and manage for 30 years at Pashulok, Virbhadra, Rishikesh for that purpose, to apply for and obtain all approvals, licenses and permits required therein and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Authorised Signatory