



DIU SMART CITY LIMITED

CIN:U74999DD2018PLC009814
Fort Road, Diu 362520
Contact : +91 2875 252126
Email: Diudscl@gmail.com

NO. DMC/DIU/CONST/SMART CITY/2019-20/1230

Dated: 20-03-2020

Tender No. 02/2019-20/DSCL-Diu

The Manager, Construction invites Proposal for the following work, on behalf of CEO, DSCL:

Sr. No	Name of work and Location	Tender Fee	EMD
1.	DEVELOPMENT AND OPERATION OF FLOATEL / FLOATING RESTAURANT IN DIU PORT	Rs. 10,000/-	Rs. 25,00,000/-

Note All details are available in RFP at www.ddtender.com , www.diu.gov.in.

1.	Downloading of RFP Documents	23/03/2020 to 13/04/2020 02:00 hrs
2.	Pre bid meeting	03/04/2020 16:00 hrs
3.	Date of Online submission	13/04/2020 14:00 hrs
4.	Date of Physical document submission	15/04/2020 16:00 hrs
5.	Date of online opening of technical bid	15/04/2020 17:00 hrs
6.	Date of opening of financial bid	To be communicated later
7.	Right to accept or reject any or the bids without assigning to any reason thereof is reserved by the undersigned.	


Manger, Construction,
DSCL-Diu

Email:- diudscl@gmail.com

Phone:- 02875 252126

REQUEST FOR PROPOSAL

**DEVELOPMENT AND OPERATION OF FLOATEL /
FLOATING RESTAURANT IN DIU PORT**

Volume I



Tender No. **02/2019-20/DSCL-Diu**



Diu Smart City Limited
C/o Diu Municipal Council
Fort Road, Diu - 362520
Contact: +91 2875 252126,
9586705143

Website: www.ddtenders.gov.in,
Email: Diudscl@gmail.com

Any amendments in this tender including the dates, venue, corrigendum, clarifications to pre-bid queries etc. shall be posted on the website www.ddtendeers.gov.in and Separate newspaper advertisement may not be placed. The tenderers are required to keep themselves informed of the developments by visiting websites regularly.

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Diu Smart City Ltd

TENDER NO. 02/2019-20/DSCL-Diu

1 NOTICE INVITING TENDER

- 1.1 Online e-Tenders are invited by Manager (Construction) on behalf of Chief Executive Officer, Diu Smart City Ltd., from experienced Bidders for operation of Floating Restaurant from Diu Port.
- 1.2 Interested eligible tenderers may obtain further information and inspect the tender documents at the e-Procurement website <https://ddtenders.gov.in>. This can also be accessed by clicking the link at Diu Administration Website <http://www.diu.gov.in>.
- 1.3 The downloading and submission of Tender Documents shall be carried out as mentioned in the Tender Document and instructions at e-Procurement website <https://ddtenders.gov.in>.
- 1.4 The proposal is to be submitted online under two cover system, the first cover containing technical information and second cover containing the price bid.
- 1.5 The technical proposal received will be evaluated and work will be awarded in accordance with criteria of evaluation as stipulated in the tender documents.
- 1.6 The area/ location identified for operation of Floating Restaurant is mentioned below:

Location	No. of Floating restaurant
At sea off Diu port	1

- 1.7 The permission shall be granted for a period of 15 years on revenue sharing basis and as detailed under various sections of this tender document.

Diu Smart City Ltd is the tender issuing authority on behalf of the UT Administration of Daman & Diu.,

- 1.8 Any amendments in this tender including the dates, venue, corrigendum, clarifications, addendum, errata etc. will be made available at the e-Procurement website <https://ddtenders.gov.in> and tenderers are requested to check and download the same for submission. This website can also be accessed by clicking the link at Diu Administration's Website www.diu.gov.in.
- 1.9 The Schedule for sale / downloading of tender document, meeting with parties and submission of tender is given below:

Sale / Downloading of Tender document	Date & Time: 23/03/2020 18:00 hrs
Last date of receiving queries from bidders	Date & Time: 03/04/2020 14:00 hrs
Pre-bid meeting	Date & Time: 03/04/2020 16:00 hrs

Date and time for online submission of Technical/Financial Bids	13/04/2020 14:00 hrs
Date and time for Physical submission of Technical Bid	15/04/2020 16:00 hrs
Date of time for opening of tender (technical bid)	15/04/2020 17:00 hrs
Date of time for opening of tender (Financial bid)	To be communicated later
Validity of Offer	180 days from submission of bid
Earnest Money Deposit	Rs. 25,00,000/- (Twenty Five Lakhs Only) in the form of Demand Draft or Banker's Cheque drawn in favour of "Chief Executive Officer, DSCL, Diu "from a Nationalized/Scheduled Bank having its branch in Diu and Payable at Diu. The EMD can also be payable in the form of Bank Guarantee (BG) (for the entire amount) from any Nationalized/ Scheduled Bank from any branch in India, encashable at Diu. The BG shall be valid upto 45 days after the date of expiry of offer validity.

Note: Diu Smart City Ltd reserves the right to change any of the above details at its sole discretion.

1.10 The downloading of document shall be carried out strictly as provided on website. No editing, addition/ deletion of matter shall be permitted. Undertaking to that effect as per Annexure - I shall be submitted.

1.11 Minimum Eligibility Criteria:

The Bidder should fulfill the requirement of Minimum Eligibility Criteria as per Clause no. 2.9 Instructions to Tenderer.

Copy of all document submitted in support of financial capacity shall be certified by Chartered Accountant / Company Secretary.

1.12 The bidders or his authorized representative is advised to attend a Pre-Bid meeting which will be convened at Diu Smart City Ltd. C/o Diu Municipal council, Fort Road, Diu on date and time indicated in Clause No. 1.9.

1.13 Tender documents are non-transferable. Tenderer must obtain the tender document in their own name/ JV and submit the tender directly in the same name.

1.14 Offers sent by fax/ telex or email will be treated as non-responsive and will be rejected.

1.15 The Diu Smart City Ltd. reserves the right to reject any or all the offers for the proposed work without assigning any reason.

1.16 Purchase of Tender

The interested firms may alternatively download the Tender documents from the UT Administration website <https://ddtenders.gov.in>, & www.diu.gov.in. The payment of Rs. 10,000/- (Rupees Ten Thousand only) as cost of tender document, can be made by Demand Draft/ Banker's Cheque drawn in favour of "**Chief Executive Officer, DSCL, Diu**" from any Scheduled / Nationalized Bank having its branch at Diu. The same shall be submitted along with the technical proposal in technical cover. The downloading of document shall be carried out strictly as provided on website. No editing, addition/deletion of matter shall be permitted. Undertaking to that effect as per Annexure – I shall be submitted.

1.17 Bid Submission

1.17.1 The detailed procedure for online bid submission has been provided in e Procurement Website.

1.17.2 Although the bid submission is online (upto 1400 hrs. on 13/04/2020), Original receipt of tender fees (if paid in cash) or Demand Draft for tender fees, Banker's Cheque/ Demand Draft/ BG towards EMD and copies of documents mentioned at Clause 1.18 & 2.14 shall be put together in a sealed cover and shall be send to Manager (Construction), DSCL, C/o Diu Municipal council, Fort road, Diu – 362520, upto 1500 hrs. on the due date. The offer properly sealed and superscribed as tender for "**OPERATION OF FLOATING RESTAURANT IN DIU PORT**" and addressed to the "**Manager (Construction), DSCL, Diu, C/o Diu municipal council, Fort road, Diu - 362520**", and shall be sent by hand delivery/Registered Post/Speed Post/courier so as to reach the Office of the "Manager (Construction), DSCL, Diu, on or before 15/04/2020 upto 16:00 hrs. (IST).

1.17.3 Technical Bids of the Bidders will not be considered in case the EMD and or Tender Fee is not submitted in the form and manner described.

1.17.4 If only single bid is received on due date and time of submission, the last date for submission of bids will be extended by seven days. Even after this extension, if only single bid remains then last date will be extended for next seven days. Thereafter, no further extension will be granted on account of receipt of single bid.

1.18 Procedure for Preparation Tender document: shall be submitted in the prescribed form in the manner explained below:

1.18.1 The downloading and submission of Tender Documents shall be carried out from <https://ddtenders.gov.in>, & www.diu.gov.in and instructions at e-Procurement website <https://ddtenders.gov.in>, No editing, addition/deletion of matter shall be permitted.

1.18.2 Addendums/ amendments/ corrigendums/ errata, etc including extension of dates if any etc will be made available at the e-procurement website and tenderers are requested to check and download the same for submission.

RFP for Development and Operation of Floatel/Floating Restaurant in Diu Port

- 1.18.3 Online bids submitted after 14:00 hours of 13/04/2020 and / or Sealed Cover as required under clause 1.17, if received by DSCL after 1600 hours of 15/04/2020 (Bid Due Date) will be considered as Late Bid and will not be accepted. The sealed cover shall be returned unopened to the Bidder. The online bid submitted by such bidder will not be opened. Bidders to note that DSCL shall not be responsible for late receipt of any bid due to postal delays or any other delay for whatsoever reason.
- 1.18.4 Technical Bid: The bidder shall submit scanned copies of the following documents in pdf format and upload the same on the online e-portal:
- Tender Fee of Rs 10,000/- (Rupees Ten Thousand Only) in the form of Demand Draft or Banker's Cheque drawn in favour of "Chief Executive Officer, DSCL, Diu" from any Nationalized/ Scheduled Bank having its branch at Diu and payable at Diu.
 - EMD of Rs 25,00,000/- (Twenty five Lakhs Only) in the form of Demand Draft or Banker's Cheque or Fixed Deposit Receipt drawn in favour of "Chief Executive Officer, DSCL, Diu" from any Nationalized/ Scheduled Bank having its branch at Diu and payable at Diu. The EMD can also be payable in the form of Bank Guarantee (BG) (for the entire amount) from any Nationalized/ Scheduled Bank from any branch in India, encashable at Diu. The BG shall be valid up to 45 days after the date of expiry of the period of tender validity
 - The documents in support of minimum eligibility criteria as mentioned in clause 2.9 shall be submitted including supporting documents as per annexures.
 - The tender document and addendum/amendments/ corrigendums/ errata, etc. including annexure duly filled and any other document called for, as per tender condition, duly signed made available at the e-procurement website shall be submitted online.
 - Any other document as mentioned at Clause No. 2.14 (b).
- 1.18.5 Price Bid: The bidder shall submit the rates in Financial offer online in the format provided in Price Bid and no other format is acceptable. The price bid has been given as a standard Financial offer format with the tender document, and the same is to be downloaded and filled by all the bidders. Once the details have been completed, the bidder should submit it online only. If the Financial offer file is found to be modified by the bidder, the bid will be rejected.

Note: Tenderer is responsible to purchase/ download Tender document and download Addendums/ Amendments/ Errata/ Replies to the queries of the Party etc., if any, issued by DSCL, from the website before submission of the Tender. Any short fall in submission of the said Addendums/ Amendments/ Errata/ Replies to the queries of the Party etc. Along with the purchased or downloaded documents while submitting the Tender may not be considered.

For any details /clarification Business Development Cell can be contacted at e-mail: diudscl@gmail.com.


Manager Construction

Diu Smart City Ltd, Diu

2 INSTRUCTION TO BIDDER / TENDERER

2.1 Background:

Diu Smart City Ltd (“DSCL”), is a SPV company formed by the UT Administration of Daman & Diu and Diu Municipal Council, with the objective of implementing Smart City development in Diu. DSCL’s vision for Diu comprises of the three goals of 1) promotion and diversification of tourism industry, 2) creation of a vibrant economy and 3) conserving and enhancing the environment. UT Administration is also trying to position Diu as a major tourist destination leveraging its cultural heritage and coastal identity. In line with this vision, DSCL has proposed development and operation of a Floatel/ Floating Restaurant in Diu Port.

A. Diu

The island of Diu is situated on the western coast adjacent to Saurashtra region of Gujarat and forms a part of the Union Territory of Daman and Diu. The island has an area of 40 sq. kms, while that of the city is 17 sq. kms, Diu city is administered by Diu Municipal Council, while the entire district is governed by the UT Administration of Daman and Diu.

Diu has a very distinct identity due to its cultural heritage and geography. It has a long coastline with several beaches, wetlands as well as a bird sanctuary. It is a historic port city which was under the influence of Mauryas, Chalukyas and other dynasties till the 15th century when it came under control of the Sultans of Gujarat. The Portuguese conquered Diu in 1546 and ruled over it till 1961, when it was liberated by India and became part of the Union. This has resulted in a very diverse cultural and architectural heritage in Diu.

Figure 1: Diu City Location Map



Diu has emerged as a popular coastal tourist destination with its unique mix of architecture including fort, churches, caves and pristine beaches. It annually receives about 10 lakh tourists comprising predominantly domestic tourists. Presently Diu is a popular weekend holiday spot for tourists from Gujarat primarily due to availability of liquor and clean pristine beaches. The city has a number of budget hotels to cater for all segments of visitors. Diu has potential to diversify its tourism offerings and become one of the more exotic beach destinations in India.

B. Proposed facility – Floating Restaurant is intended to be a signature project in Diu to match Diu’s stature as leisure tourist destination and to its enterprising people and the ever

increasing tourists. DSCL, through this tender process is seeking such financially sound and professionally competent licensee to deliver a unique dining and hospitality experience.

2.2 To obtain firsthand information on the assignment and on the local conditions, the bidders are advised visit to the project site before submitting a proposal.

Visit to site will be arranged on 03/04/2020 at 14:00 hrs from "Office of Diu Smart city Ltd, C/o Diu Municipal council, Fort Road Diu, - 362520" by their own vehicle. Need to be confirmed with detailed e-mail to diudscl@gmail.com.

Please note that the cost for preparing the proposal including visits to the DSCL and the project area, are not reimbursable.

2.3 The proposals must be properly signed as detailed below:

- a) By the proprietor in case of proprietary firm.
- b) By the partner holding the power of attorney in case of a firm is partnership (a certified copy of the power of attorney shall accompany the proposal).
- c) By duly authorized person holding the power of attorney in case of a Limited company or corporation (a certified copy of the power of attorney shall accompany the proposal).

2.4 Amendment of Proposal Document:

At any time before the due date for submission of proposals, the DSCL may, for any reasons, whether at its own initiative or modify the documents by amendment. The amendment will be notified on Diu administration website as well as in writing either through facsimile/registered post/courier/email to all firms who have purchased the bid document and will be binding on them. The DSCL may at its discretion extend the deadlines for the submission of proposals.

2.5 Scope of Proposal

2.5.1 DSCL intends to invite proposal from experienced parties for Tender For "DEVELOPMENT AND OPERATION OF FLOATEL/ FLOATING RESTAURANT IN DIU PORT".

Location	No. of Floating restaurant
At sea off Diu port	1

2.5.2 Bid Selection Criteria and Charges payable to DSCL:

- i. The Bid Selection Criteria will be the highest Revenue Share offered by the bidder.
- ii. The Operator shall pay to the Authority, amount equivalent to higher of the following;
 - a) **Revenue Share** as a %age (To be quoted as bid variable by the Bidder, (subject to a minimum 5% of the Gross Revenue) of the Gross Revenue for the period.

or

- b) **Minimum Guarantee Payment of that period** - INR 35 Lakh (Thirty five lakh) per annum, Minimum Guarantee payment will be increased at a rate of 5% per year.
- iii. The revenue share will be computed against the gross revenue as reflected in the audited annual accounts/ income-tax return, whichever is higher.
- iv. The bidder quoting highest revenue share percentage to be H1, next below to be H2, & so on.
- v. The 'revenue share' or 'minimum guarantee payment' is payable in four equal quarterly instalments, each payable within 15 days from the end of each quarter of the financial year. Applicable taxes, including GST on the above shall also be paid by the selected Bidder / Concessionaire.
- vi. The successful bidder shall furnish a Bank Guarantee Rs. 1.25 crore (Rupees One Crore twenty five Lakh) for Floating Restaurant as security deposit for specific performance of the contract and against payment due to the Licensor / UT Administration of Daman and Diu.
- vii. **Gross Revenue** – Gross Revenue will constitute all pre-tax revenue earned and/ or received by the Licensee for all items / services offered on Floating Restaurant from the date of commencement of commercial operation of Floating Restaurant and shall include any monies received by the licensee from sub- contractors / sub Licensees and other persons engaged for the purpose by the Licensee as deposits (refundable or otherwise) but shall exclude the following:
- a) Any insurance proceeds received by the Licensee;
 - b) Any monies received by the Licensee, for or on behalf of any Govt. instrumentality; and
 - c) Any deposit amounts refunded to the sub-contractors / sub Licensee or any other person provided such amount pertains past deposits on which revenue share has already been paid.

It is expressly clarified that:

1. Gross Revenue will be computed on annual basis for an accounting year in accordance with the latest Indian accounting standard.
2. In case of any dispute, discrepancy ambiguity, doubts or otherwise, relating to the computation and /or meaning of gross revenue, the decision of the Licensor, at its sole discretion, shall be final.
 - i. No anchorage fees shall be separately levied on Floating Restaurant.
 - ii. Licensee has the option of outsourcing/ subcontracting the services subject to
 - a) Prior written approval of the Licensor, and
 - b) All revenue earned and /or received and /or collected by the Licensee or his

authorized agent for all items /services offered on the Floating Restaurant are reflected in the Licensee's account for the computation of Gross Revenue and consequent payment of "revenue share" to DSCL in accordance with the terms hereof.

2.5.3 Minimum specification for Ships for Floating Restaurant

- a) Minimum capacity – 150 Seats.

2.6 Brief Description of Bidding Process:

- a) The Manager Construction, Diu Smart City Ltd, Diu invites online bids, on behalf of Chief Executive Officer, DSCL (Technical and Financial).

Step1:-Technical Proposal Evaluation

Step2:-Financial Proposal Evaluation

- b) For the purpose of the Step-1, the Bidders are required to submit documents listed in Clause No.1.18 and 2.14 as Technical Proposal. The Technical Proposal of the Bidders will be evaluated as per tender requirement. The Financial Proposal of the Bidders who do not meet the criteria stipulated herein, will not be considered & rejected.
- c) Under Step-2, the Financial Proposal of Bidders who qualify in Step-1 will be opened and evaluated to establish the financial status of the bids. The Financial Proposal shall be submitted as per the format given in Annexure-VI. (Financial proposal should be submitted online only.)
- d) The Proposal shall be ranked as first Highest (H1), Second Highest (H2) and so on, based on the revenue % quoted in financial proposal.

2.7 Eligible Bidders:

- a) The Bidder may be a single entity or a group of entities (hereinafter referred to as Consortium), coming together for providing the Services. The term Bidder used hereinafter would therefore apply to both a single entity and a consortium. Individual can also apply.
- b) The detailed evaluation of the proposals received will be carried out in accordance with Tender document.
- c) Proposals submitted by a Consortium would be bound by the following additional stipulations:
 - i. Members of the Consortium shall nominate one member as the Lead Member and Lead member of the Joint Venture/ consortium shall satisfy the Minimum Eligibility criteria.
 - ii. The proposal should contain the information sought in this document for the Lead Member and all other members;
 - iii. In case of Joint Venture (JV)/ Consortium, the lead member shall hold equity of not less than 26% for a period of three years from the date of Letter of Intent (LOI). The firm who has submitted the "Proposal Document" must be a member of J.V. / Consortium.

- d) The share holding pattern of Joint Venture can be changed after three years of commercial operation and the consent of the licensor provided that the lead member should hold minimum 26% of the shareholding of JV till end of the license period.

2.8 Proposals by Consortium:

In case the applicant is a Joint venture of two or more firms, the Proposal shall be accompanied by a notarized copy of legally binding Memorandum of Understanding (MOU) as per **Annexure VII** signed by all firms to the joint venture confirming the following:

- a) Date and Place of Signing.
- b) The purpose of Joint Venture (must include the details of contract for which the joint venture has been invited to bid.)
- c) A clear and definite manner including the proposed administrative arrangements for the management and execution of the contract works.
- d) Delineation of the duties / responsibilities and scope of works to be undertaken by each firm.
- e) An undertaking that the firms are jointly and severally liable to the DSCL for the performance of the contract;
- f) Authorized representative of the joint venture:
- g) It is expected that one of the firms of the Joint Venture will act as the lead firm representing the Joint Venture. The duties, responsibilities and powers of such lead firm shall be specifically included in the MOU/agreement. It is expected that the lead partner would be authorized to incur liabilities and to receive instructions on behalf of the Joint Venture.
- h) In the event of default by any member in the execution of assignment or part thereof, the lead member will have the authority to assign the apportioned work to any other member acceptable to the DSCL to ensure satisfactory compliance of instructions.

2.9 Minimum Eligibility Criteria

- i. The bidder must have an experience of operating at least one Floating Restaurant in the last five years
- ii. The bidder/s should have net worth of at least Rs.10 crore at the end of 31.03.2019.
- iii. In case of JV any of the member should satisfy the above criteria –
- iv. The financial data/ documents / reports shall be certified by Chartered Accountant / Company Secretary.

2.10 Earnest Money Deposit (EMD)

- a) The Earnest Money shall be lodged by the tenderer on the understanding that in the event of the tenderer withdrawing his tender before the expiry of the tender validity period stipulated in the Tender Notice, the Earnest Money deposited by the tenderer shall be forfeited.

- b) The tender/ proposal shall be accompanied by Earnest Money Deposit of Rs. 25 lakh (Rupees twenty five lakh Only) per restaurant in the form of Demand Draft/ Banker's Cheque drawn in favour of" Chief Executive Officer, DSCL, Diu" on any Scheduled/Nationalized Bank having its branch at Diu.
- c) Bids if not accompanied by the requisite Earnest Money Deposit (EMD) shall be treated as invalid.
- d) DSCL will return, generally within 10 days of the opening of the price covers of the tenders; the Earnest Money Deposits lodged by all tenderers except for those whose offers are ranked as the first three highest acceptable tenderers. Such tenderers are requested to contact Manager (Construction), DSCL, Diu for claiming such refund along with original EMD receipt issued by this office. These tenderers have to surrender the original EMD receipt for obtaining refund. No fresh correspondence in this regard will be made by DSCL.
- e) EMD of the tenderers ranked as first three highest shall be refunded on lodgement of performance security deposit by the successful tenderer.

2.11 DSCL's Right to Accept or Reject Proposal:

- a) Notwithstanding anything contained in this Proposal Document, DSCL reserves the right to accept or reject any Proposal and to annul the bidding process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons.
- b) DSCL reserves the right to reject any Proposal if:
 - i. At any time, a material misrepresentation is made or uncovered, or
 - ii. The Bidders does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the proposal.

2.12 Contents of Proposal Document:

The Proposal Document comprises the contents as mentioned in this document and would additionally include amendments / addenda/ corrigendums /errata if any, issued in accordance with Clause 2.4.

2.13 Format of Proposal:

- a) Bidders would provide all the information as per this Proposal Document and in the specified formats. DSCL reserves the right to reject any Proposal that is not in the specified formats.
- b) If the Proposal consists of more than one volume, Bidder must clearly number the volumes and provide index table of contents.
- c) The Proposal shall be typed or printed or prepared in indelible ink and the Bidder shall initial each page. The authorization to sign the document must be confirmed by a written power of attorney accompanying the proposal.
- d) The proposal must contain no interlineations or overwriting except as necessary to correct

errors made by the bidders themselves ,in which cases such corrections must be initialed by the person or persons signing the proposal.

- e) Completed technical and financial proposal must be delivered on or before the time and date stated in proposal document.

2.14 Preparation and Submission of Proposal:

- a) The Proposal and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Bidder with the Proposal may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting documents, which are not translated into English, may not be considered for the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.
- b) Envelope titled as “Technical Proposal”

The bidders are expected to examine all terms and instructions included in the document. Failure to provide all requested information will be at bidder’s own risk and may result in rejection of proposal. The technical proposal shall contain the following:

- i. Tender document along with all enclosure duly signed.
- ii. Power of Attorney in the name of persons/s signatories of the proposal.
- iii. The Proposal Document and compilation of amendments/ addendums/ corrigendum / errata, if any, with each page initialed by the authorized signatory in token of having been read and accepted by the bidders.
- iv. Proposed association arrangement (if any).
- v. Earnest Money Deposit of Rs. 25 lakh in the form of Demand Draft/ Banker’s Cheque drawn in favour of “Chief Executive Officer, DSCL, DIU” on any Scheduled/ Nationalized Bank having its branch at Diu.
- vi. Receipt of payment of cost of tender document of Rs. 10,000/- issued by the Chief Executive Officer, Diu Smart City Ltd, Diu OR in case of downloaded document from UT Administration Daman website, Demand Draft/ Banker’s Cheque drawn in favour of ‘Chief Executive Officer, DSCL, Diu’ (on any Scheduled/ Nationalised Bank having its branch at Diu) of Rs. 10,000/- (Rupees five Thousand only) shall be enclosed.
- vii. A Notarized copy of legally binding Memorandum of Understanding (MoU) as per Annexure – VII signed by all firms to the Joint Venture in case of consortium as per clause 2.8
- viii. The documents in support of minimum eligibility criteria as mentioned in clause no. 2.9 to be submitted along with supporting documents.
- ix. The evidence regarding ownership of vessel of his own / charter ship / boat on a letter from ship charter or giving name of ship / boat, registration certificate of boat, minimum seating capacity as per Clause No. 2.5.3 of “Instruction to Tenderer” satisfying conditions

stipulated at 4.4 (a) and 4.4 (e) of other special conditions.

NOTE: - BIDDERS MUST NOT INDICATE DIRECTLY OR INDIRECTLY THEIR FINANCIAL PROPOSAL ANY WHERE IN ENVELOPE OF TECHNICAL PROPOSAL. ANY SUCH DISCLOSURE SHALL RESULT IN SUMMARILY REJECTION OF WHOLE OF THE PROPOSAL OF THE CONCERNED BIDDERS.

2.15 Sealing and Marking of Proposal.

- a) The Bidder shall seal the Technical Proposal duly marking the envelopes as '**TECHNICAL PROPOSAL**'(entire proposal set and relevant information called for).
- b) This envelope shall indicate the name and address of the Bidder.
- c) The envelope shall clearly bear the following identification: Proposal for "**Operation of Floating Restaurant in Diu Port for**".
- d) The envelope shall be addressed to:

Manager (Construction)
Diu Smart City Ltd,
Diu Municipal council,
Fort Road, Diu – 362520.
Tel. No. 2875 252126, 9586705143

- e) If the envelope is not sealed and marked as instructed above, the Proposal may be deemed to be non-responsive and would be liable for rejection. DSCL assumes no responsibility for the misplacement or premature opening of such bids.

2.16 Financial Proposal - (to be uploaded online only)

The bidder shall submit the rates in financial offer online in the format provided in Price Bid and no other format is acceptable. The price bid has been given as a standard financial offer format with the tender document, and the same is to be downloaded and filled by all the bidders. Once the details have been completed, the bidder should submit it online as per instructions at e-Procurement website <https://ddtenders.gov.in>. If the Financial offer file is found to be modified by the bidder, the bid will be rejected.

Note: - NO COUNTER CONDITIONS SHOULD BE INCLUDED ANYWHERE IN THE PROPOSAL. CONDITIONAL PROPOSAL MAY BE SUMMARILY REJECTED.

2.17 Taxes and Duties:

The successful tenderer shall pay all taxes (including GST/service tax), levy, duty, etc., which they may be liable to pay to Corporation of UT administration Daman & Diu & Government of India or any other authorities under any law for the time being in force in respect of or in accordance with the execution of License Agreement. The successful tender shall further be liable to pay such increase in the taxes, levy, duty etc, under the existing law or which may be liable as a result of introduction of any law. Increase in taxes, levy, duty etc., or imposition of new taxes, levy, duty etc., shall not be a ground or an excuse for not complying with the formalities within the stipulated time or a ground or an excuse for extension of time for completing the License

Agreement. All such payments to be made by the Tenderer are deemed to have been included/considered while quoting the tender.

2.18 Proposal Due Date:

- a) Proposal should be submitted up to time and date indicated in clause No. 2.32 or extended date of submission of bids at the address provided in Clause 2.15 (d) in the manner and form as detailed in this Proposal Documents. Proposals submitted by facsimile transmission, telex or e-mail will not be acceptable.
- b) DSCL, at its sole discretion, may extend the last date of submission of bids by issuing an Addendum if any.

2.19 Late Proposal:

Any Proposal received by DSCL after last date of submission of bids as in Clause No. 2.32 may not be accepted and shall be returned unopened to the Bidder.

2.20 Validity of Proposal:

The proposal shall be valid for a period of 180 days from the date of opening of Technical Proposal.

2.21 License Period:

The license shall be granted for a period of 15 years on revenue sharing basis and as detailed under various sections of this tender document.

2.22 Modification to submitted proposals:

Any alterations, modifications or change in the submitted proposals shall be sent in writing and must reach Manager Construction, Diu Smart City Ltd, Diu prior to the closing time on last date set for submission of proposals. No notice of change, alterations or modification of the proposal shall be accepted after closing time on last date.

2.23 Responsiveness of Proposals:

The proposals received on time shall be examined for responsiveness. A responsive proposal is one which conforms to all requirements of the Proposal Document. A proposal shall be treated non-responsive for any or all of the following reasons:-

- a) Tenders not accompanied by requisite EMD as prescribed.
- b) Validity of proposal not confirmed.
- c) Proposal documents not signed and sealed in the manner prescribed in the Tender Document.
- d) The tender and supporting documents show significant variations and or inconsistency/ies.
- e) Non submission of any of the document as mentioned at 2.14 (b)

A non-responsive proposal shall be rejected at this stage and the financial offer of concerned bidder/s shall not be opened.

2.24 Scrutiny of Technical Proposals:

Responsive bids shall be examined in detail for their technical contents.

- a) Compliance to detailed Terms & Conditions of Tender Document. The detailed evaluation of Technical proposals shall be carried out in accordance with Evaluation Criteria given in Tender Documents.
- b) In the process of this examination, some clarifications may become necessary. These shall be sought and furnished in writing. However, the basis of proposal shall not be permitted to be changed/altere d either to fulfill minimum eligibility criteria or to make a non-responsive proposal responsive or to qualify for meeting the technical proposal parameters.

2.25 Opening and evaluation of Financial offer:

- a) Financial Proposal of responsive bidders who are found acceptable on scrutiny of technical contents and satisfy the criteria for evaluation, as specified in Tender Document will be opened in the presence of authorized representative of concerned bidders who may wish to remain present. The date and venue of opening of financial proposal will be conveyed to the qualified bidders.
- b) Evaluation of Financial proposals will be carried out on the basis of revenue share quoted as per 2.5.2 (i). Then ranking shall be decided based on offers received from the bidder/firm in Financial Proposal in a format at Annexure- VI. In case of discrepancy between percentage quoted in figures and words, the percentage quoted in words shall prevail. Highest acceptable evaluated offer will be considered for award.

2.26 Award of License:

Prior to the expiration period of proposal validity/ extended validity, the DSCL will notify the successful bidder who is ranked H1 among the qualified bidders in technical evaluation, in writing by registered letter or facsimile. The party selected for award of assignment shall be issued a Letter of Award by DSCL. This letter along with written acknowledgment of the successful party shall constitute contract between the party/ies with DSCL, till signing of formal agreement.

2.27 Confirmation of Receipt:

Bidder shall acknowledge by facsimile/ post/courier the receipt of Letter of award and confirm the acceptance of the proposal.

2.28 Payment of Security Deposit:

Within 14 days of issue of letter of award from the DSCL, the successful bidder shall arrange to furnish Bank Guarantee of "Security deposit" of Rs. 1.25 crore to 'Chief Executive Officer, DSCL' in the form of Bank Guarantee as per approved format of DSCL. Failure of the successful bidder to deposit the required amount shall constitute sufficient grounds for the termination of contract and bidder shall be debarred from participating in such tender for next 3 years.

2.29 Signing of License Agreement:

Within 21 days of date of issue of Letter of Award, the successful bidder shall sign formal agreement as prescribed in Volume -II of Proposal Document with such modifications as may be necessary and the correspondence exchanged up to and including the stage of award of the contract and the letter of acceptance. The stamp duty incurred in connection with this Agreement will be borne by the Licensee. Until such Agreement is executed the acceptance of the tender in terms of the Contract as defined shall be binding up on the parties and shall be the Contract.

2.30 Extension of validity of proposal:

If it becomes necessary, DSCL may request the bidders, in writing, to extend validity of proposals.

2.31 Pre-Bid Meeting:-

- a) The bidders or his authorized representative is advised to attend a Pre-Bid meeting which will be convened at Diu Municipal council, Fort Road, Diu on date and time indicated in Clause No. 2.32.
- b) The purpose of the meeting will be to clarify issues on proposal and to answer queries on any matter that may be raised at that stage. No queries after the Pre-Bid meeting will be entertained.
- c) The bidders are requested to submit any query in writing so as to reach the Manager construction (Diu Smart City Ltd), not later than five (3) days before the date of Pre-Bid meeting.
- d) The questions raised by Bidders in writing and reply of the Manager construction (Diu Smart City Ltd), thereof will be furnished to all bidders who purchased the Proposal Documents and will also be published on www.diu.gov.in website. Any modification of the Proposal Documents, which may become necessary as a result of the Pre-Bid meeting, shall be made by the Manager construction (Diu Smart City Ltd), exclusively through the issuance of an addendum as well as by publishing on UT Administration website.
- e) The queries a rise out of discussion during pre-bid meeting will also be considered and replied by “the Manager construction (Diu Smart City Ltd),” along with already received pre-bid queries.

2.32 Schedule of Bidding Process:

DSCL has fixed the following schedule for this bid. In order to meet the target dates, all bidders are requested to respond expeditiously to inquiries during the evaluation process.

Sale / Downloading of Tender document	Date & Time: 23/03/2020 18:00 hrs
Last date of receiving queries from bidders	Date & Time: 03/04/2020 14:00 hrs
Pre-bid meeting	Date & Time: 03/04/2020 16:00 hrs

Date and time for online submission of Technical/Financial Bids	13/04/2020 14:00 hrs
Date and time for Physical submission of Technical Bid	15/04/2020 16:00 hrs
Date of time for opening of tender (technical bid)	15/04/2020 17:00 hrs
Date of time for opening of tender (Financial bid)	To be communicated later

3 GENERAL CONDITIONS OF LICENSE

3.1 Definitions and General Notes:

The words and expressions beginning with capital letters and defined in this RFP shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1. “**Applicable Laws**” means all laws which are applicable to the Project and / or the Licensee extending to the UT Administration of Daman and Diu, having been enacted or brought into force by Government of India or UT Administration of Daman and Diu including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this RFP.
2. “**Applicable Permits**” or “**Approvals**” means, means all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Project.
3. “**Authority**” means Diu Smart City Ltd.
4. “**Bid**” or “**Proposal**” means the Operator’s quoted Financial Proposal and Technical Proposal for the Project, including the Operator’s Proposal, submitted to the Authority and as accepted by the Authority.
5. “**Competent Authority**” or “**Government Instrumentality**” means any agency, authority, department, ministry, public or statutory person of the UT Administration of Daman and Diu or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this RFP.
6. “**Day**” means calendar day, “**Month**” means 30 (thirty) days and “**Year**” means 365 days.
7. “**DSCL**” means Diu Smart City Ltd.
8. “**Earnest Money Deposit (EMD)**” or “**Bid Security**” or “**Proposal Security**” means the security provided by the Selected Bidder to the Authority along with the Bid / Proposal in the sum of INR (Rupees.....crore) in accordance with the Instructions to Bidders (ITB) and which is to remain in force until substituted by the Performance Security.
9. “**Encumbrances**” mean any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss

payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances or encroachments on the Facility where applicable herein.

10. **“Financial Offer”** means the undertaking, the prospective Bidder has to give in Annexure-VI
11. **“Gross Revenue”** – Gross Revenue will constitute all pre-tax revenue earned and/ or received by the Licensee for all items / services offered on Floating Restaurant from the date of commencement of commercial operation of Floating Restaurant and shall include any monies received by the licensee from sub- contractors / sub Licensees and other persons engaged for the purpose by the Licensee as deposits (refundable or otherwise) but shall exclude the following:
 - a) Any insurance proceeds received by the Licensee;
 - b) Any monies received by the Licensee, for or on behalf of any Govt. instrumentality; and
 - c) Any deposit amounts refunded to the sub-contractors / sub Licensee or any other person provided such amount pertains past deposits on which revenue share has already been paid.
12. **“License”** means an authorization by the “Licensor” to the Licensee”.
13. **“License Period”** means the period for which this permission is granted.
14. **“Licensor”** means “UT Administration of Daman and Diu” represented by Diu Smart City Ltd
15. **“Licensee”** means the successful bidder to whom the license is granted by the licensor on the terms and conditions outlined in the Tender Document.
16. **“Performance Security”** or **“Security Deposit”** means a Bank Guarantee for an amount as defined in 3.26 of the RFP.
17. **“Port”** means Ports Department, UT Administration of Daman and Diu.
18. **“RFP”** means the Request for Proposal document issued by the Authority. The terms "RFP" and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
19. **“Statutory Auditors”** means an independent, recognized and reputed firm of the chartered accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 1956 or 2013, including any statutory modification or re-enactment or replacement thereof, for the time being in force.
20. **“Selected Bidder”** means the shortlisted bidder after evaluation as per RFP, to whom Letter of Award is issued by DSCL.

21. “**Sub-license**” allied Facilities like Kitchen, restaurant, Bar, and other services outsource the other operator.
22. “**Sublet**” to allow someone to rent all or part of a Licensed Area that allotted to Licensee.
23. “**Tax**” means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws. Here, for this Project, the Concessionaire shall, at its own cost, pay all applicable existing and future taxes/ charges/ fees/ levies including, service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.
24. “**Termination Date**” means the date on which this License terminates by efflux of time or by issuance of a Termination Notice.
25. “**Termination Notice**” means the communication issued in accordance with this License by a Party to the other Party for terminating the License Agreement.
26. “**Third Party**” means any Person, real or judicial, or entity other than the Parties to this License Agreement.
27. “**Licensed Area**” means the area within which licensed activity takes place.

Notes:

- i. In these conditions and everywhere in the Tender Document expressions in singular may in the appropriate context include plural and vice-versa.
- ii. Headings are only for reference guidance.

3.2 Grant of License:

License will be granted to the successful Bidder in consideration of payment to DSCL as accepted by **the Bidder (Licensee)** in Undertaking placed at **Annexure-VI**.

License shall be granted at the cost, charges and expenses of the Licensee for Floating Restaurant.

3.3 Licensee’s Obligations under the License;

The licensee’s obligations shall be as under:-

- a) To accept License on the terms and condition contained herein;
- b) To save and except as otherwise provided in these conditions, accept all risks in respect of the “License”.
- c) To save as expressly provided herein, not to assign the license in favour of any third party.
- d) To finance, operate and manage the Floating Restaurant as per the tender document.

- e) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times for execution of its obligations.
- f) To comply with, observe and perform all the duties, obligations, and responsibilities, liabilities, which are required to be complied with, observed and performed under these conditions.
- g) Strictly adhere to the routes and time period of Facility operation as decided with consultation of the Authority.
- h) To make regular payment of revenue share at the intervals stated by the Authority. To make payments of Port Office, Diu charges for the services rendered and/or stated in the tender as per the applicable Scale of Rates and Rules and Regulations in force from time to time.
- i) Take insurance as per the applicable condition in the RFP and maintain the same all time during the License Period
- j) Develop, implement and administer a Safety Program for the purpose of this License and the users thereof and the personnel engaged in the provision of any services including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice
- k) The shipping vessel of floating restaurant to be duly certified by DG Shipping or such competent authority for the purpose of navigation, safety equipment's, certification of passenger carrying capacity, etc
- l) Conduct Safety audit of the floating restaurant every six months through an independent auditor certified in assessment of shipping vessels (as per International Convention for the Safety of Life at Sea [SOLAS] and International Ship and Port Facility Security [ISPS] Code) and submit the audit report to the authority within 15 days
- m) Undertake regular maintenance, routine maintenance and preventive maintenance of Facility
- n) The expenses for water, electricity, etc. shall be arranged and borne by the Licensee
- o) Designate and appoint suitably qualified officers/ representatives as it may deem appropriate to supervise the implementation of its obligations under this RFP and to deal with the Authority or its representative and to be responsible for all necessary exchange of information required pursuant to this RFP
- p) The Licensee or its representative shall not carry out any casino / gambling / illegal/ unauthorized activities at the Floating Restaurant / Licensed facility premises
- q) To peacefully handover the licensed area in good condition to DSCL on expiry of license period in accordance with the provision of these conditions.

3.4 Licensor's Obligations under the license:

- a) Provide the Licensee access [Right Of Way] to the Location and permit the Licensee to execute its activities and obligations as per this License
- b) Provide access to the embarking and disembarking Facility at the designated jetty as offered in the License
- c) Provision and maintenance of the jetty facilities offered in the License.
- d) Not give permission to any third party for operating similar business till the completion of Three (3) years from the issuance of LOI under this RFP.

3.5 License Period:

The license shall be granted for a period of 15 years on revenue sharing basis and as detailed under various sections of this tender document.

3.6 Premises for use of Licensee:

The bare space/ water front will be made available to Licensee on "AS IS WHERE IS BASIS". The licensee shall at his own cost, charges and expenses may do temporary modifications with the prior approval of DSCL/ applicable authority. No modifications/ improvement of permanent nature is allowed.

3.7 Use of License:

The License shall not be put to any purpose other than for operating a Floating Restaurant/ allied activities as stated in the Tender document.

3.8 The Ownership of the area permitted for Anchoring/Mooring ship:

- a) The ownership of premises shall always and at all times vest and deemed to vest in the government.
- b) Whenever the Tender Inviting authority requires the area, the Licensee shall have to vacate the same at 30days notice and relocate to other area indicated by the Tender Inviting authority, for the remaining license period at the Licensee's cost.

3.9 Safety and Security Requirements:

The Licensee shall during the subsistence of the License:

- a) Undertake all such safety precautions with all required approvals from the applicable authorities as per best industry practices that are incidental to the activities in accordance with the License
- b) Ensure safety requirements of all passengers and staff through provision of life jackets, fire-fighting and other necessary safety equipment.
- c) A rescue boat shall be made available in full readiness at all times during the operation of the Facility

- d) The Licensee shall ensure complete safety to the Port Property and users of licensed properties in all respect.
- e) Ensure all the provision of “The inland vessels Act, 1917” and rules made there under.
- f) The Licensee needs to conduct Safety audit of the floatel every six months through an independent auditor certified in assessment of shipping vessels (as per International Convention for the Safety of Life at Sea [SOLAS] and International Ship and Port Facility Security [ISPS] Code) and submit the audit report to the authority within 15 days.
- g) Comply with the effluent and emission limits as per the standards set by respective government authorities
- h) Make good any damage/ destruction caused to jetty / port facilities due to direct/ indirect neglect of the Licensee

3.10 Engagement of Labour and Staff:

The Licensee will be free to operate the facilities with its own or contractors’ workers.

3.11 Environmental and other Statutory Clearances:

The Licensee will be required to obtain all approval and clearances from Diu Municipal council of Diu (DMC), State Pollution Control Board, Chief Controller of Explosives, Customs etc. and any other statutory clearances required from various departments under the various Acts and Rules in force at his own cost for the specific activities requiring such permission and shall be responsible to those Statutory Bodies without any liability on DSCL whatsoever. The Licensee will have to get the Environmental Impact Assessment (EIA) prepared by an approved agency if required by the authorities concerned at Licensee’s his own cost.

3.12 Security:

The Licensee can deploy his own security at Floating Restaurant and the licensed premises and the Jetty area, embarkation/ disembarkation.

3.13 Access to Licensor’s Representative for Inspection:

At all times the Licensee shall allow full access to the authorized representative of licensor to inspect the licensed area. Authority may deploy manpower for counting of visitor at Jetty or ferry boat.

3.14 Obligation to obtain all statutory Clearances, Permissions:

The Licensee shall at its own cost obtain and maintain valid all statutory clearances and permissions as may be required by laws for operating a Floating Restaurant. Further the Licensee shall obtain the food & liquor licenses from the Competent Authority (Casino or off seen activity not permitted). However, the Tender Inviting Authority may facilitate without any obligation for all necessary permissions and clearances to be obtained by the licensee within the stipulated period of time.

3.15 Failure to pay dues of the Port:

Delay or failure on the part of the Licensee to make payments to the Port as per the accepted offer shall render the Licensee for payment of simple penal interest on the amounts due at the rate of SBI PLR + 2 % per annum.

3.16 Taxes, Levies etc:

The Licensee shall meet all legal and financial obligations and shall pay all lawful taxes, assessments or charges which may be levied by the tax assessment levying agencies, including corporate tax or any other taxes or charges levied from time to time by any Government authority.

3.17 Labour Regulations:

The Licensee shall comply with the requirements of all the statutes, bye laws, rules and regulations in respect of its workmen and employees as may be applicable from time to time.

3.18 Insurance etc.:

The Licensee shall take out all necessary insurance covers as required by the law and ensure that these are valid throughout the Licensed Period. The Licensee shall indemnify and protect and hold the Tender Inviting Authority/ DSCL harmless from and against all suits, actions, claims, demands, damages, losses, expenses and any other kind of descriptions to which Licensee may be subjected by the reason of injury to the person or property during the use of the licensed area by the Licensee. If during the License period any loss of property and/or life takes place, the loss and account of the same shall be borne entirely by the Licensee and DSCL shall not be liable for any such claims.

In general, the Licensee shall, at its cost and expense, purchase and maintain during the License Period, such insurances as are necessary at the time of starting of the Floating Restaurant Facility, including but not limited to the following:

- a) Licensee's all risk insurance;
- b) Procure Comprehensive third party liability insurance including injury or death to staff of Licensee, Authority and Users who may enter the Facility/ Location and mentioned the Authority as beneficiary.
- c) Workmen's compensation insurance;
- d) Any other insurance that may be necessary to protect the Licensee, its employees and its Facility (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

The Licensee shall provide to the Authority copies of all insurance policies (or certifications or other satisfactory evidence of insurance) obtained in accordance with this RFP. The Licensee shall pay the premium payable on such insurance policy (ies) so as to keep the policy (ies) in force and valid throughout the License Period.

3.19 No Nuisance/ Annoyance to Others:

The Licensee shall not indulge or allow anybody else to indulge in anything, which may be or become or occur to be danger, nuisance or annoyance to the Port or any other agency in the vicinity of the licensed area.

3.20 Liability to the person at the area permitted for ship and / or at the Ship:

DSCL shall not be liable to the Licensee's employees, patrons, customers, visitors or any person(s) or any damages to the person(s) or property caused by any act of omission negligence, or for non-compliance with any statutory requirement of the Union, State Government by the Licensee or its agents, employees, assigns.

The Licensee shall indemnify and keep DSCL harmless against all claims throughout the License Period.

3.21 **Default:**

The following shall constitute the event of default by the Licensee: -

- a) if at any time, any payments, assignments, charges, lien or damage herein specified to be paid by the Licensee shall remain in arrears and unpaid for a period of 45 days, or
- b) if Licensee is adjudicated to be as bankrupt or become insolvent; or
- c) if the Licensee assigns or sublets or parts with any interest of the Licensee in any manner whatsoever of the Licensed area; or
- d) change in control of the Licensee arising from sale, assignment, transfer or other disposition of capital stock in the Licensee; or
- e) if the Licensee through any of its employees, by taking advantage of their free access to the Licensed Premises, engage in or knowingly take part or fail to take action to prevent the commission of any illegal activities at the Licensed Premises; or
- f) If the Licensee shall do any act or thing thereby causing harm to the said licensed area; or its interests, the Licensee's allotted area therein shall be distrained, attached, seized.
- g) • If the Licensee operates any casino or carries out any gambling / illegal/ unauthorized activities at the Floating Restaurant / Licensed facility premises

In the event of default, the Licensee shall be informed in writing by the DSCL of any alleged violation the Licensee may have committed; giving the Licensee a period of 60 days from the date of receipt of such written communication to clarify, explain or commence to rectify such default. Thereafter, the Tender Inviting authority may in the event of such clarification, explanation or rectification, not being found satisfactory proceed to take necessary action to suspend, cancel or terminate the License;

Upon termination of license, the licensee shall handover vacant and peaceful possession of the licensed area after removal of the construction, equipment, fixtures, furniture, passenger/ cruise operation material etc. to the Licensor failing which the Licensor shall take possession of the area including arrears which may have accrued upto the date of handing over of possession of the area to the Licensor with due process of law and forfeit the Scrutiny Deposit.

3.22 **Termination of License:**

The License is awarded by the Tender Inviting Authority to the Licensee upon the conditions that the Licensee shall observe each and every term and condition of the License. In case of violation of any of such conditions by the Licensee, the Licensor shall terminate the License after giving 3 months' notice.

3.23 No Compensation on Expiry of License period:

No compensation whatsoever shall be payable by the Tender Inviting Authority to the Licensee on expiry of the License Period.

3.24 Cumulative Remedies:

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude either Party from availing or exhausting any other remedies that may be available to it under law. All remedies available to either parties, shall cumulative and the exercise of, or failure to exercise, one or more remedies by either Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by either Party.

In the event of dispute between the parties after acceptance of award of contract, efforts will be made to settle the issue mutually, failing which matter will be referred to arbitration under Arbitration and Conciliation Act, 1996, as per Annexure VIII.

3.25 Law:

License shall be subject to all the prevailing laws of India and UT Administration of Daman & Diu. The licensee shall abide by all the prevalent laws and regulations and fulfill all statutory obligations without any liability to DSCL.

3.26 Security Deposit:

The successful tenderer shall arrange to furnish bank guarantee of Rs. 1.25 crore (One Crore twenty five lakh) as Security Deposit for specific performance of the contract and against payment due to the Tender Inviting Authority. This amount shall bear no interest. The Security Deposit will be returned to the Licensee on expiry of the License period and/or handing over possession of the area to the Licensor after deduction of sums, if any that may have become due and payable in respect thereof.

3.27 Amendment:

The conditions of License may be amended only with written mutual agreement between the Licensee and the Licensor.

3.28 Illegality:

If for any reason whatsoever any provision and condition is held to be void, illegal or invalid under present or future laws or regulations effective and applicable during the License Period, such provision shall be fully separable and this License shall be construed as if such void or illegal or invalid provision and ever comprised part of the License shall remain in full force and shall not be affected by such illegal or invalid provision had ever comprised part of the License conditions and the remaining provision of the License shall remain in full force and effect and shall not be affected by the such illegal or invalid provision or by its severance from this Agreement.

3.29 Peaceful possession of Area on Expiry of License period or on termination of License:

The Licensee shall remove the constructions, equipment, ships etc. on the expiry of license period or on termination of the license at his own cost and handover peaceful possession of the licensed property.

3.30 Renewal of License period:

No renewal of license is permitted under this contract beyond the license period.

3.31 The Exit Clause for the Licensee:

The Licensee will have an option to exit with a notice period of six months and forfeiture of the performance guarantee as below –

- Exit within 3 years of license – forfeiture of 5% of Performance Guarantee.

3.32 Advertisement Rights:

The Licensee shall have the rights or equivalent to provide advertisements on the boat structure as he may deem fit subject to the following conditions:

- 1) The dimension, design, colour, location, characteristics, etc. of the advertisement elements shall be approved by the Authority in advance initially and for all significant changes before such rights can be exercised.
- 2) Any violation from approved design or from the following conditions may be rectified by the Licensee immediately on being given notice by the Authority. Any violation further shall attract damages as per the RFP.
- 3) The advertisement rights and optional rights can be revoked by DSCL / authority. If it is found violating any of the conditions of the agreement.
 - a) All National/ State local level rules and norms in terms of products, themes, content and mode of display would continue to apply.
 - b) The content of the advertisement shall maintain standards of decency and uphold public morals. The Authority shall reserve the right to prohibit any advertisement in which it finds having objectionable content.
 - c) Materials used in advertisement device shall be non-polluting, fire resistant and injury proof.
 - d) It shall not be a threat to the safety and security of the surrounding environment and/or the visitors.
 - e) No advertisement shall be displayed for banned products and services, any banned advertisements, having indecent representation of women, violence and racial abuse.
 - f) Any such advertisement as considered improper for a public place by the Authority.

4 SPECIAL TERMS AND CONDITIONS OF THE LICENSE

4.1 License Period:

The license shall be granted for a period of 15 years on revenue sharing basis and as detailed under various sections of this tender document.

4.2 Location and number of Floating Restaurant:

Location	No. of Floating restaurant
At sea off Diu port	1

4.3 Bid Selection Criteria and Charges payable to DSCL:

- i. The Bid Selection Criteria will be the highest Revenue Share offered by the bidder.
- ii. The Operator shall pay to the Authority, amount equivalent to higher of the following;
 - a) **Revenue Share** as a %age (To be quoted as bid variable by the Bidder, (subject to a minimum 5% of the Gross Revenue) of the Gross Revenue for the period.
 - or**
 - b) **Minimum Guarantee Payment of that period** - INR 35 Lakh (Thirty five lakh) per annum, Minimum Guarantee payment will be increased at a rate of 5% per year.
- iii. The revenue share will be computed against the gross revenue as reflected in the audited annual accounts/ income-tax return, whichever is higher.
- iv. Minimum Guarantee payment will increase at a rate of 5% per annum.
- v. The bidder quoting highest revenue share percentage to be H1, next below to be H2, & so on.
- vi. The 'revenue share' or 'minimum guarantee payment' is payable in four equal quarterly instalments, each payable within 7 days from the end of each quarter of the financial year. Applicable taxes, including GST on the above shall also be paid by the selected Bidder / Concessionaire.
- vii. The successful bidder shall furnish a Bank Guarantee Rs. 1.25 crore (Rupees One Crore twenty five Lakh) as security deposit for specific performance of the contract and against payment due to the Tender Inviting Authority.
- viii. **Gross Revenue** – Gross Revenue will constitute all pre-tax revenue earned and/ or received by the Licensee for all items / services offered on Floating Restaurant from the date of commencement of commercial operation of Floating Restaurant and shall include any monies received by the licensee from sub- contractors / sub Licensees and other persons engaged for the purpose by the Licensee as deposits (refundable or otherwise) but shall exclude the

following:

- a) Any insurance proceeds received by the Licensee;
- b) Any monies received by the Licensee, for or on behalf of any Govt. instrumentality; and
- c) Any deposit amounts refunded to the sub-contractors / sub Licensee or any other person provided such amount pertains past deposits on which revenue share has already been paid.

It is expressly clarified that:

1. Gross Revenue will be computed on annual basis for an accounting year in accordance with the latest Indian accounting standard.
 2. In case of any dispute, discrepancy ambiguity, doubts or otherwise, relating to the computation and /or meaning of gross revenue, the decision of the Licensor, at its sole discretion, shall be final.
- ix. No anchorage fees shall be separately levied on Floating Restaurant.
- x. Licensee has the option of outsourcing/ subcontracting the services subject to i) approval of licensor, and ii) revenue and billing from customers to be collected by licensee directly and reflected in the licensee's account for 'revenue share' to DSCL.
- xi. Operation closed during Monsoon: During monsoon season, (1st June to 15th August) the Operation will be closed consequently there will not be any incidence of revenue share.

4.3.1 **Minimum specification for Ships for Floating Restaurant**

- Minimum capacity – 150 Seats
- The ship shall have multiple decks – 1) Air-conditioned restaurant with lounge area/ banquet hall for hosting functions/ events, 2) Roof-top open deck restaurant
- Shipping vessel shall comply with the applicable standards & specifications of IMO (International Maritime Organization)
- The ship to be duly certified by DG Shipping or such competent authority for the purpose of navigation, safety equipment's, certification of passenger carrying capacity, etc.

4.4 **Other Special Conditions:**

- a) At any point of time during the License Period, the number of boats in operation for the Floating Restaurant shall not exceed the maximum limit stated by the Authority in this RFP/ License Agreement
- b) Within 15 days from issuance of the Lol, the bidder has to submit evidence regarding ownership of his own/ charter ship/ boat on a letter from a ship charterer that within six months of Letter of Intent the ship/boat will be made available to the bidder.

- c) The Licensee shall be allowed to carry out the Facility in the well-defined location as mentioned in this RFP, or along the route path as approved by the Authority.
- d) The ship proposed to be operated as floating restaurant should be equipped with state of the art equipment for navigation, safety, pollution prevention etc. and fully compliant with all requirements pertaining to the navigation, pollution control and all other safety measures.
- e) The ship to be duly certified by MMD/ DG Shipping or such competent authority for the purpose of navigation, safety equipment's, certification of passenger carrying capacity, etc.
- f) The successful party shall indemnify the Tender Inviting authority from any damages, consequences, cost etc. arising out of operations at the designated locations in the Diu Port.
- g) The ship should have comprehensive insurance cover including P&I insurance, hull insurance, wreck removal clause, etc. throughout the License period.
- h) The ship will be normally anchored at a designated anchorage in Diu Port, and will be permitted to cruise within the port limits on a pre-defined route path, only with specific approval/ clearance of the Authority. However, during bad weather condition or in monsoon season ship may be allowed to anchor within creek channel of Diu depending upon the tidal condition.
- i) The Floating Restaurant (ship) may be operational throughout the year Except Monsoon period. The Licensee shall run the facility only in favorable weather conditions
- j) The Floating Restaurant (Ship) will be manned all the time by appropriate qualified personnel for navigational purpose as applicable under the certification class of the ship by Port Office/ Marine Department, UT Administration of Daman and Diu.
- k) The Authority or its authorized representatives shall have access at all hours to the site or any part thereof and inspect the services provided by the Licensee.
- l) Floating Restaurant may operate for 24 hours, subject to relevant permission from respective Statutory Authorities of UT Administration Daman & Diu, / Govt. of India.
- m) The passengers will be allowed to be ferried to and fro by launches from Diu Jetty, or any other location decided/ arranged by successful bidder. Operator can use his own yacht / ferry for this purpose. No fresh harbor craft license will be issued for commercial purpose, except for limited purpose of ferrying passengers/ guests to and fro floating restaurant.
- n) The successful bidder will have to obtain NOC from Indian Navy, Coast Guard, Diu Police and other statutory authorities of UT Administration / Govt. of India for the purpose of operation of the restaurant ship from security angle and submit all necessary clearances and NOC from all concerned statutory authorities. DSCL may support the bidder for obtaining NOC by writing letter of support. However, bidder has to complete formalities for obtaining NOC from the concerned authorities.
- o) The successful bidder will have to obtain and submit all necessary statutory licenses including from Municipality, FDA, Medical Officer of Health (MOH), Shop & Establishment, and Gradation for restaurant etc. as also Excise license for liquors etc. from UT Administration. However, the Tender Inviting Authority may facilitate without any obligation

for all necessary permissions and clearances to be obtained by the licensee within the stipulated period of time.

- p) The successful bidder will have to specifically obtain consent of Daman/Diu Pollution Control Board for operation of a floating restaurant in the port specifically with regard to Marine Pollution. However, the Tender Inviting Authority may facilitate without any obligation for all necessary permissions and clearances to be obtained by the licensee from the applicable statutory authorities/ agencies within the stipulated period of time.
- q) In the event of refusal of clearance / NOC by any statutory authority, and non-receipt of the clearance within 9 months from Letter of Intent, the tender will be cancelled and Earnest Money Deposit / Security Deposit will be refunded to the bidder.
- r) The successful bidder will have to submit the details of means to be employed, to the satisfaction of the Port authority, to dispose off oil sludge and oil mixture as per MARPOL, which will be generated during the course of operation. *Note: Marpol 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978. ("Marpol" is short for marine pollution and 73/78 short for the years 1973 and 1978.)
- s) All the garbage and oily mixture needs to be dispatched ashore by boat/barges and should be cleared only via the bunder/jetty. The disposal of waste should also be in conformity with the stipulations that may be made by the Municipality.
- t) Gestation period for the operation of Floating Restaurant shall be for 6 months from the date of Award of license to the commencement of operation. Extension of three months shall be allowed on proper justification. However, in case of bidder is able to commence the commercial operations of floating restaurant before the 6 months of gestation period, the bidder will be entitled to the incentive as under:

Between 5 to 6 month	20% of revenue share for 1 month
Between 4 to 5 month	30% of revenue share for 2 months
Between 3 to 4 month	40% of revenue share for 3 months

- u) The period of license shall commence from the date of award of license.
- v) The Jetty area required for operational purpose for embarkation and disembarkation of passengers/ guest to and fro floating restaurant such as area at Jetty may be given subject to availability and as per the requirement of successful bidder on applicable charges. Bidder is free to make arrangement with the Port Office, UT Administration Daman & Diu or any other agencies for land at landing points.
- w) Change of vessel is permitted with higher capacity vessel.

Vessel may be "self-propelled" or "non-self-propelled". In case of vessel being "non-self-propelled", maintenance of adequate stand by tugs are required by the Licensee at his cost

and risk as may be approved by Dy. Conservator of Diu Port. The stand by tugs are to be exclusively maintained for this purpose only.

The licensee should have DG Shipping approved towing plan for the said floating restaurant.

- x) Anchorages available in the port, can be availed by the Floating Restaurant subject to payments of charges and availability. In case of floating restaurant not operated or remains idle for whatever reasons and remains idle in port waters, applicable port charges shall be payable to Port Office, Diu.
- y) The Licensee shall provide all assistance to the authority for facilitating revenue verification

4.5 Other conditions:

- a) DSCL reserves the right to revoke the license by a notice period of 3 months. Under no circumstances, subletting of allotted area is permitted.
- b) The installation of Jetty facilities for use of ship & passenger at the limited water front/ land area will be permitted subject to technical clearance from concerned authority of the Port Authority.
- c) Permission for internal and external modification in the sheds and open areas, if required will be granted subject to technical clearance from UT Administration.
- d) License will not entail creation of any kind of interest of any nature, whatsoever in any immovable property of the Diu Port.
- e) Licensed areas will be in the physical control and possession of the DSCL at all times and the DSCL and its officers shall have free and complete access to all such areas for the purpose of inspection and for other related purposes.
- f) Upon the expiry of the license, the licensee would have no right on this behalf of any kind whatsoever whether by way of injunctive relief or damages or compensation or otherwise, and that licensee shall remove all his material forthwith and at his own cost, failing which the Board will be entitled to do so at such Licensee's risk and consequences and cost.
- g) DSCL reserves its absolute right to offer facilities, areas, equipment to any other operator/s for similar purpose at any terms and conditions and rates as deemed appropriate.
- h) DSCL shall not be responsible for any loss / damage to guest or any other person and materials. Maintenance of safety and security in the said area shall be responsibility of the Licensee.
- i) Licensee shall undertake and abide by all necessary safety precautions while carrying out Floating Restaurant activities with necessary permission from all concerned.
- j) DSCL shall not be responsible for the any liability to the employees engaged by the licensee for carrying out the work.
- k) No claim for damage or for losses of any kind will be entertained on any account whatsoever.
- l) The Licensee shall immediately notify and report all minor/ major accidents at the site to the

m) Authority

n) The Licensee's repeated inability to meet the safety requirement or the repeated number of accidents shall be considered a significant deviation from desired performance of the Licensee and the Authority retains the right to levy and collect from the Licensee, at its sole discretion, appropriate damages from Licensee for such non-performance. Authority retains the right to cancel the License and forfeit the Performance Security in case of such an event. Under no circumstances will the Authority assume any responsibility for such failure or be liable to pay any compensation to anyone.

4.6 Payments of Revenue share to the DSCL (Licensor): -

The Licensee will be required to pay to Licensor as per clause no. 4.3 of Special Condition of Contract.

- a) The Licensee shall pay to the Licensor, the Revenue share per Quarter equivalent to [*] % ([*] percent) of the Gross Revenue chargeable by the Licensee (* - as offered in Price bid)
- b) Revenue share for each Quarter shall be paid on or before the seventh Day of the immediately succeeding Quarter.
- c) The payment of Revenue share shall commence from the Quarter in which the Licensee places ship/ Floating Restaurant for operation.
- d) Revenue share amounts remaining unpaid on respective due dates would carry interest @ SBI PLR plus 2% (two percent) per annum from the due date till the date of payment or realization thereof.

4.7 Certified Accounts & Additional Auditor

- a) The Licensee shall submit to the Licensor a financial statement of the Gross Revenue for every 6 (six) monthly period ending 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 60(Sixty) Days of the end of each such period.
- b) The Licensor shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "Additional Auditor") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Licensor and report to the Licensor such information as may be desired by the Licensor for any period and the Gross Revenue ("Special Audit").
- c) In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Licensee shall pay Revenue share on the Gross Revenue reported by the Additional Auditor. The Licensee shall also pay interest @ SBI PLR plus 2% (two percent) on the difference between the Revenue share paid by the Licensee based on the Gross Revenue reported by the Statutory Auditor and that payable by the Licensee based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the Revenue shares as above. Further the Licensee shall reimburse all costs, charges and expenses related to the Special Audit.

Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than [5]% (five percent), the Licensor shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Revenue share.

4.8 Environmental, Security, Safety and other Statutory Clearances: -

- a) DSCL is not the licensing authority for Floating Restaurant but only providing water front and landing/ boarding points on license basis.
- b) For pollution, garbage disposal, sewage disposal etc. the Project proponent have to follow the best international practices under various conventions as MARPOL and Indian Acts including on air pollution and water pollution.
- c) No objection from Daman/Diu Pollution Control Committee is necessary and the Licensee should obtain the same from time to time.
- d) All Permissions/ NOC especially security related issues, needs to be obtained by Licensee directly from Navy, Coast Guard, Diu Police, etc.
- e) All other permissions/clearances from respective statutory authorities for operation of Floating Restaurant in harbour ought to be obtained by the Licensee directly.
- f) DSCL shall not to be responsible and shall be indemnified by the Licensee in all respect for any actions arising out of this operations.
- g) Licensee may use one of jetty for unloading the garbage etc. by a boat on payment of relevant charges applicable time to time. This facility can be provided by DSCL on a written request from Project Proponent and adhering to the conditions conveyed by DSCL.
- h) Licensee shall obtain requisite permission from DG Shipping or any applicable authority for operation of the Facility.

* However for all the above mentioned activities, the Tender Inviting Authority may facilitate without any obligation for all necessary permissions and clearances to be obtained by the licensee within the stipulated period of time. This is to also mention that if the selected agency does not comply with rules & regulations of any of the department, the department may issue a notice to the agency. If the agency is again found in default the Tender Inviting Authority may terminate the agency as per recommendation of other departments.

4.9 DSCL may invite tenders for such activities in its other water fronts/ Anchorages, to operate the floating Restaurant or similar activities.

4.10 The Licensee has to pay berthing fees/ water conveyance charges on catamarans/ boats/ yachts etc. used for the purpose of ferrying passengers/ provision etc. as approved by time to time.

ANNEXURE-I: UNDERTAKING BY THE BIDDER

(Should be submitted in the firm's letter head)

To
Chief Executive Officer,
Diu Smart City Ltd,
Diu

Sub: Tender for "DEVELOPMENT AND OPERATION OF FLOATEL / FLOATING RESTAURANT IN DIU PORT"

I/We, M/s. _____ have gone through the tender document carefully and hereby confirm as under:

The complete tender set i.e. Technical cover sealed as described in clause No. 2.14 and is submitted as per clause no. 2.15 of tender and the same is WITHOUT any defacement, addition or alteration as prescribed and with all the relevant Appendices and Proforma duly filled in.

I/We have submitted our tender with requisite Earnest Money Deposit lodged and accept the validity period as described in the Clause No. 1.9 of RFP.

I/We have not indicated anywhere in the first cover, the amount of our price bid.

I/We have not made any counter stipulation and conditions and I/We agree that in the event of any such counter conditions my/our tender will be summarily rejected and as such offer will not be evaluated and considered at all by you.

I/We hereby declare that, all information furnished by me/us with this tender is true to best of my /our knowledge, belief and in case, if it is found that, the information furnished is not true or partially true or incorrect, I /We agree that, my/our tender shall be summarily rejected without prejudice to the right of the Chief Executive Officer, Diu Smart City, Diu to take further action into the matter.

I/We have not made any payment or illegal gratification to any person/authority connected with the bid process so as influence the bid process and have not committed any offence under the Prevention of Corruption Act 1988 in connection with the bid.

Witness'

Tenderer's

Signature : _____

Signature: _____

Name: _____

Name: _____

Designation: _____

Designation : _____

Address: _____

Address: _____

Tel. No. : _____

Tel. No. : _____

Date: _____

Date: _____

ANNEXURE-II: PERFORMANCE STANDARDS

Performance Standards to be fulfilled and strictly adhered to by the Licensee with regard to Amenities during the Operation, Maintenance and Management of the Facility

The below mentioned list prescribe the minimum standards to be maintained by the Licensee. Breach of such standards shall attract penalty from the Authority commensurate with the nature of the breach. Repetitive breach in spite of warning from the Authority can also result in termination of License.

Additional standards may be implemented keeping in view the particular situation characteristics.

A. GENERAL

1. The Floating restaurant facility provider should take care not to pollute the water or the surrounding premises of the designated location.
2. Obtain all the required Licenses/ approvals/ permits, etc for setting up and running the boating facility as per this RFP.
3. Comply with applicable labor laws.
4. The boats used shall not be allowed to travel at a speed or in a way that causes a nuisance or damage to people or other ships, or causes damage or erosion to the creek or port property.
5. Complaint / Suggestions Register to be placed and maintained at the embarking/ disembarking location
6. Proper Signage shall be provided at all prominent locations and the carrying capacity of the boats shall have to be clearly displayed so that it is noticeable by the public as well as regulatory agencies.
7. The Life Jackets will be available in sufficient numbers on the boats as well as nearby shore for embankment/ dismemberment.
8. A first-aid box with standard supplies will be available on shore at an easily accessible location.
9. Rescue tube, specifically developed for on-water rescue, will be carried on the rescue boat as well as on the shipping vessel of the floating restaurant.

B. BOAT/VESSEL MAINTENANCE

Electrical system

Protection of the electrical system against corrosion by taking the following measures:

- Keep all electrical systems clean and corrosion free by frequent inspections.
- Spray terminals, electrical connectors, etc. with a corrosion-retarding agent. Keep all electrical fittings dry.
- Check that the lights are working even in daytime

Routine maintenance

Before each trip:

- Test navigation lights.
- Check the bilges are clean and dry, investigate the sources of leaks.
- Check that the bungs are not worn and that the washer is in good condition.
- Test steering gear for stiffness.

Monthly:

- Check freeing ports (deck drain flaps) for positive opening and closing action.
- Check condition of all safety equipment (the detail of this is included in the safety equipment section) before securely storing it.
- Inspect the boat for rubbish – it is especially important to remove stray metal items from an aluminum boat.
- Check berthing lines and anchor rope for wear.
- Check that all auxiliary systems (anchor winch, windscreen wipers etc) are functioning.

Yearly:

- Inspect through-hull fittings for corrosion and water tightness; ensure sea cocks are working and check the condition of hoses and clamps attached to them.
- Check that important fittings are still securely attached.
- Have the LP gas system serviced.
- Have any 240-volt system checked.
- Check aluminum hulls for corrosion and fatigue cracks, check fiber-glass for blistering and impact cracks.
- Check anodes for erosion, replace when about 40 percent

C. THROWING OF GARBAGE

The bidder has to ensure at all times that there is no discharge of any of the following garbage by either the passengers of the boat or his workers/ staff:

- Plastics: includes synthetic ropes, fishing nets, and plastic bags
- Floating drainage, lining and packing materials
- Food waste, paper, rags, glass, metal, bottles, crockery, and similar refuse
- Comminute or ground food waste, paper, rags. glass, etc.

D. SAFETY REQUIREMENTS

1. Well trained staff/ workers
2. Adequate First Aid kits at the Facility
3. Adequate number of Personal Floatation Devices (PFDs) in good and serviceable condition and of appropriate sizes shall be made easily accessible to all the passengers
4. Adequate number of throwable devices that can be made available immediately shall be maintained
5. Adequate fire-fighting equipment including fire-extinguishers in working condition shall be available at all times at the Facility. The Facility shall be in compliance with all

applicable fire-fighting norms of the respective government agency including but not limited to DG Shipping.

6. A rescue boat shall be made available in full readiness at all times during the operation of the Facility
7. The Licensee needs to conduct Safety audit of the floatel every six months through an independent auditor certified in assessment of shipping vessels (as per International Convention for the Safety of Life at Sea [SOLAS] and International Ship and Port Facility Security [ISPS] Code) and submit the audit report to the authority within 15 days.
8. To follow all the safety norms as per the Best Industry Standards and safe practices.

E. STAFF QUALITY

1. Smart and clean Staff Uniforms
2. Staff Welfare / Facilities

F. ECO FRIENDLY PRACTICES

Pollution Control Measures as prescribed by the UT Pollution Control Board for water pollution, noise pollution, etc.

b) For pollution, garbage disposal, sewage disposal etc. the Project proponent have to follow the best international practices under various conventions as MARPOL and Indian Acts including on air pollution and water pollution.

G. WASTE MANAGEMENT

For pollution, garbage disposal, sewage disposal etc. the Project proponent have to follow the best international practices under various conventions as MARPOL and Indian Acts including on air pollution and water pollution.

H. UNALLOWABLE PRACTICES

- To operate any casino / gambling / illegal/ unauthorized activities at the Floating Restaurant / Licensed facility premises
- To operate the boat in a careless or reckless manner.
- To operate the boat in such a manner that is it obstructs or tends to obstruct ordinary navigation.
- To operate the boat outside the area or time limit allotted for the same or outside the permissible limits as set by the Authority.
- To deposit or leave refuse in or upon the waters of the state or at public access areas

ANNEXURE-III : DATA SHEET

1. Constitution of Firm :

2. Nature of the firm (state whether Ltd. company, Partnership/Associates or Firm or Sole Proprietor), if Partnership, attach Photo Copies of Partnership deed. :
3. Year of Establishment :
4. Registration No., if any :
5. Telegraphic address, if any :
6. Registered Postal Address :
7. Telephone No (s), if any
8. Address of Branches, if any

9. a. Name of the Directors in case of company/Associate

9. b. Name of the Partners in case of Partnership Firm

9. c. Name of the Proprietor (Please indicate address of each Director, partner, Proprietor as the case may be with telephone No. if any)

9. d. Name of the Chairman in case of Co-Operative Society.

10. Permanent Income Tax No.

11. a. Annual Turnover of Last three Financial Years for which experienced is claimed.

2016-17

2017-18

2018-19

11. b. Other documents in support of minimum experience for 3 preceding years in support of the minimum qualifying criteria should be submitted.
12. Name of the Bankers and Branch With full address.
13. Type of Bank Account & Account No
NEFT / MICR details
14. Name (s) of person (s) operating the Account.

We do hereby certify that the information as provided above is correct and true in all respects.

SIGNED BY

NAME & ADDRESS

Date:

Rubber Stamp

ANNEXURE-IV: INDICATIVE ANCHOR LOCATION AND MOVEMENT ROUTE



Note: Actual Route will be approved by Collector, Diu.

ANNEXURE-V: PREAMBLE TO TENDER

TENDER FOR "OPERATION OF FLOATING RESTAURANT IN DIU PORT" ON LICENSE BASIS FOR 15 YEARS.

1. I/We _____, have carefully read and noted all the Instructions and Conditions of Tender in connection with operation of Floating Restaurant on license basis for 15 years and agree to abide by all the terms and conditions stipulated / in accordance with the Tender Document.
2. I/We also know that DSCL reserves the right to cancel the license without assigning any reason.
3. I/We have understood that the License period is for 15 years from the date of intimation of acceptance of offer and shall not be extendable under this contract.
4. I/We undertake that facilities erected at the allotted areas will be of temporary nature and will be used by us (and not by any third party) during the license period. The same shall be removed within 30 days after date of issue of notice for dismantling/removing the facility/passenger/cruise handing equipment.
5. I/We undertake that the temporary facilities shall be at the allotted area and I/We shall restrict the activities strictly within the area allotted and use the area for the purpose for which permission is granted. Further I/We shall comply with, observe and perform all the duties, obligations, responsibilities, liabilities, which are required to be complied with, including all risks in respect of license under these conditions during license period. Also I/We will not resort to touting or soliciting business in the terminal and not make any improvement or modification of the space.
6. I/We know that the License at the proposed premise will be at the cost, charges and expenses of ours and I/we will obtain the necessary permission from Port, Customs.
7. I/We know that, as per clause No. 3.22 of General Conditions of License in the event of default / violation as per the license informed in writing by the Tender Inviting Authority, I/We may have committed, the Port may in such event / default suspend, cancel or terminate the License. Upon termination of license, the Tender Inviting Authority shall have right to bring suit/s for and collect all due payments of obligations which may have accrued up to the time of such termination and forfeit the Security Deposit and the license fee for the remaining period paid in advance.

Dated this _____ day of _____ 2020

Signature

(Authorised Signatory) _____

FINANCIAL OFFER

ANNEXURE-VI: FINANCIAL OFFER FORMAT

I UNDERTAKE TO PAY FOLLOWING REVENUE SHARE TO DIU SMART CITY LTD "**FOR OPERATION OF FLOATING RESTAURANT IN DIU PORT**" ON LICENSE BASIS FOR 15 YEARS.

Location	Percentage of Revenue share (in figure)	Percentage of Revenue share (in words)
DIU		

(Minimum percentage of revenue share to be 5%)

Note: Minimum Guarantee Payment of INR 35,00,000 (Thirty five lakh per Annum). Minimum Guarantee payment will be increased at a rate of 5% on every year.

SIGNATURE OF BIDDER

ANNEXURE-VII: FORMAT IN CASE OF JOINT VENTURE AGREEMENT

(MEMORANDUM OF UNDERSTANDING)

Know all men by these presents that we, -----
and ----- (persons and companies name) (herein after
collectively referred to "the consortium / Joint venture") for execution of tender.

Whereas Diu Smart city Ltd (hereinafter referred to as "DSCL") has invited tenders from the
interested parties for ----- (hereinafter referred to as "the contract").

Whereas the members of the consortium / joint venture are interested in bidding of the work of --
----- in accordance with the terms and conditions of
the tender.

This Joint Venture agreement is executed to undertake the work and role and responsibility of the
firms are ----- (role and responsibilities of each firm for administrative arrangement for
management and execution of contract) and ----- (name of the person) of (name of the
firm) and ----- (name of the person) and ----- (name of the firm) are the authorized
representative of respective firms.

As whereas it is necessary under the tender conditions for the member of the consortium / joint
venture to appoint and authorize one of them as Lead firm to do all acts, deeds and things in
connection with the aforesaid tender.

We hereby nominate and authorize ----- as our constituted attorney in our
name and on our behalf of do or execute all or any of the acts or things in connection with the
execution of the Tender No: -----

----- and thereafter to do all facts, deeds and things on our behalf and thereafter
till the satisfactory completion of work.

And we hereby agree that all acts, deeds and things done by our said attorney shall be construed
as acts, deeds and things done by us and we undertake to ratify and conform all and whatsoever
that my said attorney shall do or cause to be done for us by virtue of the power hereby given.

In witness hereof we have signed this deed on this the ----- day of -----

SIGNED, SEALED & DELIVERED

SIGNED, SEALED & DELIVERED

By the with named _____ through it
duly constituted attorneys _____ in the
presence of

By the with named _____ through it
duly constituted attorneys _____ in the
presence of

ANNEXURE-VIII: DISPUTE RESOLUTION

1.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessioneing Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

1.2 Assistance of Expert

The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The cost of obtaining the service of the Expert shall be shared equally.

1.3 Arbitration

(a) Arbitrators

Failing amicable settlement and/or settlement with the assistance of Expert appointed by the Parties by mutual consent, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. Unless the Parties mutually agree otherwise, within 30 (thirty) Days of invocation of the arbitration as mentioned below, the rules of arbitration prescribed by the International Centre for Alternative Dispute Resolution, New Delhi shall apply to the arbitration. The arbitration shall be by a panel of three Arbitrators, one to be appointed by each Party and the third, who shall act as presiding arbitrator, to be appointed by the two arbitrators appointed by the Parties. The arbitration shall be invoked by one party issuing to the other a notice in writing invoking the arbitration and appointing an Arbitrator. Upon receipt of the notice, the other Party shall appoint the second Arbitrator. The two Arbitrators so appointed shall appoint the third Arbitrator who shall act as the 'Presiding Arbitrator'. If the other Party fails to appoint a second Arbitrator within 30 (thirty) Days from the receipt of the request to do so, then the Arbitrator so appointed by the first party shall adjudicate the disputes as 'Sole Arbitrator'.

(b) Place of Arbitration

The place of arbitration shall be the headquarters of the Concessioneing Authority in India; i.e. Diu.

(c) English Language

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

(d) Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

(e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

(f) Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid equally by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the successful party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the Party.

(g) Performance during Arbitration

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

DRAFT LICENSE AGREEMENT

DEVELOPMENT AND OPERATION OF FLOATEL / FLOATING RESTAURANT IN DIU PORT

Volume II



**Tender No. 02/2019-20/DSCL-Diu
DIU SMART CITY LTD
C/O DIU MUNICIPAL COUNCIL
FORT ROAD, DIU - 362520**

Note: This is a copy of draft license agreement, and Authority/Licensor may appropriately add /modify terms in this draft license agreement.

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Licensing of Development AND Operation of Floatel / Floating Restaurant

At

Diu Port, Diu

(Draft License Agreement)

Name and address of the Licensee:

Diu Smart City Ltd.

C/o Diu Municipal Council

Fort Road, Diu, 362520

1 Draft License Agreement

Agreement No. _____ of Year 20__

THIS License agreement made and entered into on this _____ day of 20____ between Diu Smart City Ltd, incorporated under the Company Act 2013 and having its office at Diu Smart City Ltd, Diu Municipal Council Building, Fort Road, Diu, – 362 520, (hereinafter referred to as the “**Licensor**” (which expression shall, unless excluded by or repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the First Party.

AND

_____, having its registered office at _____
and represented by (PROPREITOR/ COMPANY/ CONSORTIUM) _____, hereinafter called “**Licensee**” (which expression shall unless repugnant to the context or meaning thereof include the successors and assigns) of the Second party.

WHEREAS

- (a) Diu Smart City Ltd, (DSCL) is a Special Purpose Vehicle (SPV) for Implementing Diu Smart city Ltd. Which is formed by (UT Administration Daman and Diu & Diu Municipal council) had invited open bid on behalf of UT Administration of Daman and Diu On _____ day of _____ 20__ for licensing for Development and Operation of Floatel / Floating restaurant in Diu Port, from the interested parties. Based on Request for Proposal received from Bidders, successful bidder _____ (Name of Licensee/successful bidder) has been selected for assigning licensing rights of Development and Operation of Floatel / Floating restaurant in Diu Port on “as is where is basis” to the “Licensee”.
- (b) Licensor has agreed to provide to the Licensee, for Development and operation of Floatel/ floating restaurant at Diu Port, the Licensing rights of licensed space of Development and operation of Floatel/ floating restaurant (as defined in APPENDIX – I of the agreement) on “as is where is basis”, herein after referred to as “Development and operation of Floatel/floating restaurant at Diu Port”, on payment of License Fee along with applicable taxes and interest free Security Deposit (SD) and other charges to Licensor on the terms and conditions hereunder contained in this License Agreement.
- (c) Licensee shall Finance, Develop, manage, operate, maintain and vacate the licensed space allotted to them at Diu Port, Diu, Daman and Diu as specified in this Agreement at its own cost.

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

- A. The following documents shall be deemed to form part of and be read and construed as part of this agreement in order of their priority, namely:

- i. Letter of Intent no _____ dated _____.
- ii. The written clarifications and addenda issued.
- iii. Request for Proposal (RFP),
- iv. Any other document of (Authority) and Licensee forming part of the Bidding Process.

The Licensee hereby covenants as follows: -

- i. Licensee hereby assumes responsibility for licensed space of Development and operation of floatel/floating restaurant at Diu Port (as defined in APPENDIX – I of the agreement) at Diu Port, Diu, Daman and Diu. Licensee shall be responsible to Finance, Develop, manage, operate, maintain and vacate Licensed Space as specified in this Agreement at its own cost. All the alterations, installations on jetty/ies proposed by the Licensee are subject to approval by the Licensor with regard to operational feasibility, aesthetics, and safety and security concerns.
 - ii. Licensee irrevocably agrees to make all payments including revenue share (license fee), and other amounts due to the Licensor as per this Agreement as and when due, without delay or demur, without waiting for any formal advice from The Licensor in this regard.
 - iii. The Licensee confirms having examined the potential location of the Licensed Space allocated in Diu Port waterfront area, Diu in detail and fully understands and comprehends the technical and operational requirements of the Development and operation of floatel/floating restaurant. The Licensee also confirms full satisfaction as to the business viability of the licensed space allocated in Diu Port Waterfront area and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account. Licensee also confirms having made independent assessment of present and future market potential and no future claim what so ever regarding change in market circumstances shall be used by it as an alibi or excuse for non-payment of license fee and other amounts due to the Licensee under this License Agreement.
- B. That The Licensor and Licensee represent and warrant that they are empowered, authorized and able to make this agreement.

In Witness whereof the parties hereto have caused this agreement to be signed in their respective hands as of the day and year first before written.

<p>...../...../20....</p> <p>(.....)</p> <p>Authorized Signatory</p> <p>FOR AND ON BEHALF OF LICENSOR</p>	<p>...../...../20....</p> <p>(.....)</p> <p>Authorized Signatory</p> <p>FOR AND ON BEHALF OF LICENSEE</p>
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In Witness whereof the LICENSEE and the LICENSOR have set their hands hereunto on the day, month and year first written above in the presence of the following witnesses:

<hr/> LICENSOR	<hr/> LICENSEE
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2 Definitions and Interpretations

2.1 Definitions

- (a) “Agreement” means the License Agreement to be executed between the Licensor and the Selected Bidder in the format approved by The Licensor and includes any amendments, annexure hereto made in accordance with the provisions hereof.
- (b) “Applicable Laws” means all laws, brought into force and effect by Govt. of India, State Governments, local bodies and statutory agencies and rules/ regulations/ notifications issued by them from time to time. It also includes judgments, decrees, injunctions, writs and orders of any court or judicial authority as may be in force and effected from time to time.
- (c) “Permits” shall mean and include all applicable statutory, environmental or regulatory licenses, authorization, permits, consents, approvals, sanctions, registrations and franchises from concerned authorities.
- (d) “Applicable Permits” or “Approvals” means all clearances, licenses, permits, authorizations, no objection certificates, consents, sanctions, approvals and exemptions required to be obtained or maintained under Applicable Law, in connection with the “Development and operation of Floatel / Floating restaurant in Diu” during the subsistence of this Agreement.
- (e) “As is where is basis” means Licensee shall be Licensed the The bare space/ water front will be made available on ‘as is where is basis’ and the Licensee shall at his own cost, charges and expenses may do temporary modifications with the prior approval of DSCL / applicable authority. No modifications/ improvement of permanent nature is allowed. Licensee shall not be entitled to any compensation for any additions carried out by them in the licensed space.
- (f) “Bid” means the documents in their entirety comprised in the RFP, including all clarifications, addenda and revisions issued by the Licensor to the Bidders, the Proposal submitted by the successful Bidder (Licensee) in response to the Request for Proposal in accordance with the provisions thereof.
- (g) “Bidder” means any entity which is a registered sole proprietorship firm, a partnership firm or a company having registered office in India, or a combination of above in the form of Joint Venture (JV) or consortium etc.
- (h) “Earnest Money Deposit” means the refundable amount submitted by the interested applicant along with the Bid to the Licensor.
- (i) “Change in Law” means the occurrence or coming into force of any of the following after the date of signing this Agreement:
 - a) The enactment of any new Indian law
 - b) The repeal, modification or re-enactment of any existing Indian law
 - c) Any change in the rate of any Tax

Provided that Change in Law shall not include:

- i. Coming into effect after the date of signing this Agreement of any provision of a statute which is already in place as of the date of signing this Agreement (or)
 - ii. Any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Agreement, which is a matter of public knowledge.
- (j) "Commencement Date" means the date of commencement of License Period.
- (k) "Consortium Members" means -----, ----- & -----
- (l) "Clearance" means, as on the date of execution of this Agreement, any consents, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective operation of the licensed space;
- (m) "Damages" shall mean any claim of The Licensor against the Licensee for breach of this Agreement, including but not limited to damages of jetty facility, dues, arrears etc. against which the Licensee shall be entitled to claim and adjust the Security Deposit.
- (n) "Encumbrances" means, in relation to the licensed space, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities, where applicable herein.
- (o) "The Licensor" means "UT Administration of Daman and Diu" represented by Diu Smart City Ltd
- (p) "Authorized Signatory for Licensor" means Chief Executive officer, Diu Smart city Ltd, or shall be appointed by UT Administration of Daman and Diu.
- (q) "Licensee" means the selected bidder, who has executed the License agreement with the Licensor pursuant to bidding process for Development and operation of Floatel / Floating restaurant in the Licensed space at Diu Port.
- (r) "Security Deposit" means interest free Security Deposit to be furnished by Licensee to the Licensor as per terms and conditions of License agreement, to be released after successful completion of license period.
- (s) "License" means the licensing rights granted by the Licensor to the selected bidder for Development and operation of Floatel / Floating restaurant at Diu Port, based on the terms and conditions of the License Agreement.
- (t) "License Fee" means the Revenue share amount payable by the Licensee to the Licensor as per terms and conditions of the license agreement along with any kind of Central or State Taxes, local levies, statutory dues, etc that may be payable by the Licensee as per prevalent law.
- (u) "License Period" means the period beginning from the Commencement Date and ending on the Termination Date by efflux of time or sooner determination in accordance with the terms of this Agreement.
- (v) "Lead Member" is the member leading the consortium duly authorized by other consortium

members. The representative of Lead Member will be the single point of contact throughout the Concession Period.

- (w) "INR", "Rs." or "Rupees" refers to the lawful currency of the Republic of India;
- (x) "Selected Bidder" means the bidder who has been selected by the Licensor, pursuant to the bidding process for award of License.
- (y) "Development and operation of Floatel / Floating restaurant" or "Licensed Space" means licensed Space namely the specified area as defined in APPENDIX – I of the agreement, on "as is where is basis" at Diu Fort, Diu for commercial activities (excluding prohibited activities as specified in Appendix-II), given on License basis by The Licensor to the Licensee under and in accordance with this Agreement.
- (z) "Tax" means and includes all taxes, fees, cesses, levies that may be payable by the Licensee under the Applicable Law to the Government or any of its agencies.
- (aa) "License Termination" means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.
- (bb) "License Termination Date" means the end of the License period from the commencement date or date of sooner determination of the License period in accordance with the terms of this Agreement whichever is earlier.

2.2 Interpretations

2.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;
- (d) the table of contents, headings or sub-headings in this Agreement 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 and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
- (j) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (k) the words importing singular shall include plural and vice versa;
- (l) references to any gender shall include the other and the neutral gender;
- (m) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (n) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (o) 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; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Licensor hereunder or pursuant hereto in any manner whatsoever;
- (p) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (q) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (r) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (s) the damages payable by either Party to the other Party, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be

suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).

(t) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires any reference to Operate/Operations shall mean Operate and Operations & Maintenance unless the context otherwise requires

2.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Licensee to the Licensor and/or the agency or person appointed by the Licensor shall be provided free of cost and in two copies, and if the Licensor and/or the person appointed by the Licensor is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

2.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

2.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

2.3 Measurements and Arithmetic Conventions

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

2.4 Priority of Agreements and Errors/Discrepancies

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

- a) this Agreement;
- b) Letter of Intent
- c) Written clarifications and addenda issued.
- d) RFP Document
- e) all other agreements and documents forming part hereof;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b), (c), (d) and (e) above.

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

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail; between the written description on the Drawings

and the Specifications and Standards, the latter shall prevail;

- c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and between any value written in numerals and that in words, the latter shall prevail.

3 Grant of License

3.1 The License to develop and operate a Floatel/ Floating Restaurant in the sea off Diu Port, has been offered to the Licensee, as detailed in Appendix-I.

APPLICABLE RESERVATIONS

3.2 The license has been granted to the Licensee for Development and operation of Floatel / Floating restaurant (excluding prohibited activities detailed in Appendix-II):

LICENSE COMMENCEMENT AND TENURE

3.3 The License period shall be granted for fifteen (15) years term from commencement date.

3.4 After completion of Fifteen (15) years of License or upon termination, the Licensee shall not reserve any rights to the allotted licensed space. The Licensor shall have right to call for fresh proposal for the Licensed space.

3.5 The Licensee will have an option to terminate or Exit from the License Agreement with a notice period of six months and forfeiture of the performance guarantee as below

- Exit within 3 years of license – forfeiture of 5% of Performance Guarantee

In case of breach of this commitment by the licensee, complete License Fee deposited by the licensee shall be forfeited. In such case interest free security deposit will be refundable after deduction of applicable dues/arrears/damages etc, subject to agreement conditions.

3.6 The Licensee shall remove the Floatel/ Floating Restaurant on the expiry of license period or on termination of the license at his own cost and vacate the designated location.

3.7 In case of breach of License Agreement or if the Licensee is desirous of terminating the License without serving any intimation/notice period or shorter intimation/notice period than 6 months, the agreement shall have deemed to be terminated on completion of such improper intimation period. In such cases, complete advance license fee and security deposit paid by the licensee shall be forfeited. Balance outstanding dues, if are more than interest free Security Deposit, shall be also recoverable from the Licensee before Licensee is permitted to remove their establishment(s) or else Licensor will seize their property treating as “Zero” or “Nil” value. Licensor shall be free to dispose of the said property/goods in whatsoever manner it deems fit. Licensee shall have no claim for compensation of consideration/ damages in this regard.

LICENSE FEE

- 3.8 The License to operate Floating Restaurant off Diu Port and access to the designated location and access to the jetty shall be handed over to Licensee on _____ day of _____ 20____. The License fee for Development and operation of Floatel / Floating restaurant, bearing Identification No. _____ shall commence w.e.f. _____ considering 6 (Six) month for Development period for financing/ Develop / preparation/ renovation of licensed space and shall be charged till the termination/ completion of agreement.
- 3.9 The Licensee agrees voluntarily and unequivocally to make all payments to Licensor as may be due before the due date, without waiting for any formal advice from Licensor.
- 3.10 The license fee shall pay to the Authority, amount equivalent to higher of the following;
- a) Revenue Share as a _____%age (To be quoted as bid variable by the Bidder, (subject to a minimum 5% of the Gross Revenue) of the Gross Revenue for the period.
or
 - b) Minimum Guarantee Payment of that period - INR 35 Lakh (Thirty five lakh) per annum.

The Licensee also irrevocably agrees that an escalation of 5% per year over the Minimum guarantee amount for the immediately preceding year as per the provisions of this Agreement.

- 3.11 Deleted
- 3.12 The licensee shall make payment through Demand Draft/Banker's Cheque/RTGS/NEFT to the bank account as per bank details provided in the Lol after obtaining prior approval of Licensor as per the prescribed format.
- 3.13 Licensee shall periodically advise the details of payment deposited with Licensor.
- 3.14 Non-payment of License Fee and other dues within the prescribed date shall constitute Material Breach of Contract and Licensee's Event of Default under this Agreement and shall entitle Licensor to terminate the License Agreement as per provisions stipulated in Article-8 of the License Agreement. Besides, the licensee shall pay an interest of SBI PLR plus 2% (two percent) per annum on the amount of license fee and other dues outstanding after the due date and falling in arrears. Interest shall continue to accrue on monthly compounding basis till all the payable amount of license fee and other dues are finally squared up. Such interest shall be charged on outstanding dues for the actual day(s) of delay in payment.
- 3.15 In case payment is not made by due date, 15 days' notice to cure the Licensee's Event of Default shall be issued. In the event of licensee failing to cure the Default, Licensor shall be entitled to terminate the license after issuing 30 days' termination notice and shall be free to forfeit Interest Free Security Deposit after adjustment of all dues payable by the licensee what so ever and take such other action available to it under this Agreement and as per Law. The utilities being provided to the licensee may be disconnected after 15 days of termination notice if the licensee fails to deposit the outstanding dues.
- 3.16 The licensee shall vacate Licensed Space by taking away all his articles and hand over vacant space to Licensor on or before the 30 days grace period from date of issue of termination notice otherwise Licensor shall take over the possession of the property goods and all the belongings/ inventory/ property/installations/ fittings/furniture/goods etc. shall be vested with Licensor at Zero/Nil value. Further Licensor shall be free to dispose of these goods by any procedure as deemed fits manner. The Licensee hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration thereafter in future.
- 3.17 The Licensee shall vacate the premises within 30 days of termination of the License Agreement. A certificate from Licensor or its authorized representative in proof of licensee having vacated the site shall be required to be submitted by the Licensee. Any claim of vacation/ non-vacation without the endorsement of Licensor or its authorized representative shall not be entertained.

INTEREST FREE SECURITY DEPOSIT

- 3.18 Licensee shall pay Interest Free Security Deposit to Licensor Rs 1.25 Crore (One Crore twenty five Lakh) as Security Deposit. The Interest Free Security Deposit shall be accepted through Demand Draft/Bank Gurantee/RTGS/NEFT to the bank account as per bank details provided in the Lol. Security Deposit should remain valid for a period of sixty (60) days beyond the date of expiry of License period.
- 3.19 Interest Free Security Deposit shall be refunded after successful completion of the full term of the License period or on surrender of the licensed space as provided above in para 3.4 in case the licensee opts to exit from the contract before full term.
- 3.20 Interest Free Security Deposit shall be refunded in case Licensee exists from the License Agreement after successful completion of License Period subject to conditions in para 3.5.
- 3.21 In case of death of licensee, legal heir shall be responsible for the Licensed space. On expiry of the License the unadjusted balance of Security Deposit and advance deposits shall be returned / refunded to the legal heir of the licensee after adjustment of dues, if any.
- 3.22 Licensor reserves the right to forfeit Security Deposit and all other payments made by Licensee under below conditions:
- a) If the Licensee has abandoned the Licensed space for more than 30 (thirty) days without written approval from the Licensor or his/her appointed representative.
 - b) Exiting from license agreement after payment of Security Deposit even without taking possession of Licensed Space.
 - c) In case of any Licensee Event of Default or breach of License Agreement.
- 3.23 Licensor reserves the right for deduction of Licensor's dues from Interest Free Security Deposit at any stage of agreement i.e. currency/completion/termination/surrender, against -
- a) Any physical damages caused by Licensee or its contractor/sub-contractors/staff and labour employed/ engaged by them to the property of the Licensor
 - b) Any amount imposed as a penalty and adjustment for all loses/damages suffered by Licensor for irregularities committed by the Licensee.
 - c) Any amount which Licensor becomes liable to the Government/Third party due to any default of the Licensee or any of his servant/ agent.
 - d) Any payment/ fine made under the order/judgment of any court/consumer forum or law enforcing agency or any person working on his behalf.
 - e) Any other outstanding payment due to Licensor as per License Agreement.
- 3.24 Once any amount is debited from the interest free Security Deposit, the Licensee shall reimburse the Security Deposit to the extent the amount is debited, within 15 days period failing which it shall be treated as Licensee's Event of Default.

TAXES AND OTHER STATUTORY DUES

- 3.25 Deleted.
- 3.26 GST and other taxes, as applicable time to time, shall also be borne by Licensee.
- 3.27 All other statutory taxes, statutory dues, local levies, as applicable shall be charged extra and shall have to be remitted along with the License Fee for onward remittance to the Government. The Licensee shall indemnify Licensor from any claims that may arise from the statutory authorities in connection with this License.
- 3.28 Payment of all stamp duties for registration of licensed space required to be executed for license agreement shall be borne by Licensee.

4 Develop, Operation and Maintenance of Floating Restaurant

4.1 Minimum specification for Ships for Floating Restaurant

- Minimum capacity – 150 Seats
- The ship shall have multiple decks – 1) Air-conditioned restaurant with lounge area/ banquet hall for hosting functions/ events, 2) Roof-top open deck restaurant
- Shipping vessel shall comply with the applicable standards & specifications of IMO (International Maritime Organization)
- The ship to be duly certified by DG Shipping or such competent authority for the purpose of navigation, safety equipment's, certification of passenger carrying capacity, etc.

4.2 Operation of Restaurant:

- (a) Licensee shall operate and maintain the Floating Restaurant during the Agreement Period and adhere to Operation and Maintenance Requirements outlined by the Licensor. In case Licensor finds Licensee failing to meet any Operation and Maintenance Requirements as outlined by the Licensor, Licensor shall give a notice to Licensee stating the fault (the "Fault") and grant time to rectify the same. If Licensor finds the Fault has not been rectified within the time period specified, then Licensor shall have the right to rectify the Fault and recover the expenses for the same from Licensee. In such case, Licensor shall have the right to encash Security Deposit to the extent of expenses incurred in rectification of the fault.
- (b) Licensor shall be required to apply for and obtain clearances as applicable for holding any event in the Licensed Space, including but not limited to permissions from local bodies, police, Cost Guard, Navy, fire department etc.
- (c) Licensor shall be required to acquire, on his own cost, all applicable permits required to be obtained or maintained by the Licensee under Applicable Laws for the operation of the licensed space during the subsistence of this Agreement.
- (d) The activities as mentioned in APPENDIX-II of this agreement, shall be strictly prohibited in the Licensed Space.
- (e) Licensee shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Licensed Space.
- (f) Licensee shall ensure that fire detection and suppression measures installed inside his premises are kept in good working condition at all times.
- (g) The Licensee voluntarily and unequivocally agrees to provide un-fettered access to the fire officer of Licensor for inspection at any time and agrees voluntarily and unequivocally to abide by and comply with all instructions as may be indicated by the fire officer. Non-compliance may be treated as breach of contract and license shall be terminated.

- (h) Licensee shall ensure that all electrical wiring, power outlets and gadgets are used and maintained properly, for guarding against short circuits/ fires. The instructions in this regard by the Licensor electrical inspector/authorized representative must be complied with. Any cost/s associated with implementation of such instruction shall be borne solely by the Licensee.
- (i) The Licensee voluntarily and unequivocally agrees not to seek any claims, damages, compensations or any other consideration whatsoever on account of implementing the instruction issued by Licensor fire officer, electrical inspector, Security officer or their authorized representatives from time to time.
- (j) Licensee shall keep and maintain the licensed space in neat, clean condition and in safe and sound manner during the license period. Any defective, weak or corroded structure should be replaced immediately with new proper structure. In case of any incident/ injury caused due to error/ omission attributable on the part of Licensee, the Licensee shall be responsible for all compensation.
- (k) Licensee and its employees or other persons involved in the execution of the work shall not in any way impinge on the safety and security of the premises, visitors' convenience, and Licensor's assets.

In case of serious accident caused due to negligence of the Licensee, resulting in injury, death to visitor or Licensor's employees or loss to Licensor's property, it shall constitute Material Breach of Contract and considered Licensee Event of Default that shall entitle Licensor to terminate the License Agreement with 60 days written notice.

- (l) The Licensee shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- (m) Access to premise shall be regulated by the Authorized person of the Licensor and Licensee is required to take necessary permissions in this regard from the office of said Authorized person as per extant policy of Licensor. It is clarified that the permission to the Licensee shall not be unduly denied.
- (n) The Licensee shall ensure safety and security of Licensed space. Licensor shall not take any responsibility.
- (o) Joint inspection of Licensed Space shall be conducted by Licensor's officials and Licensee, on regular basis as scheduled by said Authorized person. Discrepancy noticed or instructions issued by Licensor shall be rectified/ complied by Licensee within a period of 15 days, failing which Licensor reserves right to impose fine/ penalty as deemed fit by Licensor. Deliberate or willful noncompliance of Licensor written instructions for a period of 90 days shall constitute Material breach and Licensee Event of Default that shall entitle Licensor to encash Security Deposit and or terminate License Agreement after giving 60 days notice to the Licensee. Such termination of License Agreement and forfeiture of interest free Security Deposit by Licensor after adjustment of all dues what so ever shall be without prejudice to any other damages, rights or remedies applicable under law in its favour.
- (p) The overall control and supervision of the premises shall remain vested with Licensor who shall have the right to inspect the whole or part of the licensed premises as and when considered necessary, with respect to its bonafide use and in connection with fulfillment of the other terms and conditions of the license agreement. Licensor so reserves the right to enter the licensed premises to repair and replace the fixtures provided by Licensor.

- (q) The Licensee recognises and acknowledges the fact that the Project is intended to provide a public

facility and the Licensee shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Licensee apprehends any detriment to the Facility, it shall seek instructions from the Licensor or its authorized representative, whose decision in this regard shall be final.

(r) Further, Licensor can impose the fine/penalty on Licensee as deemed fit on the following offenses:

- i. Licensee staff found in drunken condition/ indulging in bad conduct.
- ii. Any staff of the Licensee found creating nuisance on duty.
- iii. Improper maintenance & defacement of the Property.
- iv. Dishonor of drafts and Cheques given by Licensee in favour of Licensor.
- v. Misbehavior with staff of Licensor, other occupants and visitors of the premises.
- vi. Not following safety and security norms as may be indicated by authorized representative of Licensor.
- vii. Any staff of the Licensee found without ID Card.
- viii. Not following the instructions issued by Licensor's authorities from time to time

(s) The option to impose fine, penalty, etc under this License Agreement shall be exercised by Authorized person or by Licensor's authorized representative.

(t) On operational ground/ administrative exigency, the Licensor may ask the Licensee to vacate any Licensed Space. Thereupon, the Licensor shall refund the interest free Security Deposit after adjusting damages & dues and balance License Fee on prorata basis. The Licensee unequivocally and voluntarily agrees not to seek any claim, compensation or any other consideration on this account on whatsoever reason.

5 Rights and Obligations

5.1 Licensee's Obligations:

The Licensee's Responsibilities and Duties shall include the following, in addition to and without prejudice to other obligations under this Agreement

- (a) To finance, develop, operate and manage the Floating Restaurant as per the granted License.
- (b) to obtain due permits, necessary approvals, licenses, clearances and sanctions from the competent authorities for intended commercial activities or infrastructure facilities including interior decoration of ship, Solid waste management, firefighting, telecommunication, Cost Guard, Navy, DG Shipping, etc.;
- (c) to discharge its obligations as per the applicable conditions of licenses, proprietary rights, permits, and the principles of good industry practice and as a reasonable and prudent person, statutory requirements, laws of the land and any other norms, which are applicable from time to time.
- (d) Strictly adhere to the routes and time period of Facility operation as decided, in consultation of the Authority.
- (e) to bear the cost/ expenditure to be incurred on the commercial operation of the Floatel/ Floating Restaurant during the entire Agreement Period;
- (f) to make all payments due towards the grant of License in a timely manner, as per the provisions of this Agreement.
- (g) to duly supervise, monitor and control the activities in the Licensed Space, including regulating the use of Licensed Space by third party sub-contractors, if any, appointed by the Licensee;
- (h) to get prior approval of the Licensor in case there is any change/modification in the Licensed Space defined hereof during the Agreement Period.
- (i) to ensure that no structural damage is caused to the existing Jetty/ies, & other permanent structures of the Licensors' property as a result of his activities or any of its agents, contractors, etc.
- (j) to provide all assistance to the Licensor, its appointed facility management team/s, and their authorized representatives, as it may require for the performance of their duties and services;
- (k) to ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the premises. The Licensee shall be liable or responsible for destruction or damage to the premises;
- (l) to ensure only commercial gas cylinders are used for the operations at the Licensed Space and ensure only gas burners/electric gadgets are used in the kitchen for preparation of food items;
- (m) to ensure compliances of all rules and regulations/notifications issued from time to time by Ministry of Health, Municipal Corporation and/or any appropriate authority in this regard;

- (n) ensure that the operation of the licensed space including but not limited to its branding or naming, commodities and services offered does not negatively affect public sensitivities. In case of default of such nature, Licensor reserve the right to take necessary action as deemed fit.
- (o) to have the right to locate hoardings and advertisement boards, as per the applicable laws after prior approval from Licensor, in the approved location in the Project Facility. The Licensee will have to follow the colour scheme and design for various hoardings/ display boards as approved by Licensor.
- (p) be responsible for all liabilities arising out of operation, maintenance & management of the License Space. The Licensee shall plan, organize and execute the Works so that there is least disruption to the movement and minimal inconvenience to the neighboring facilities. The Licensor shall assist the Licensee in all respects with reference to such works, but the assistance or denial thereof shall not release the Licensee from its obligations;
- (q) to be responsible in the operation of machinery and any other work, to take all precautions to ensure safety of the staff, labourers and public.
- (r) to take all reasonable steps to protect the environment (both on and off the Licensed Space) and to limit damage and nuisance to people and property resulting from operations, within guidelines specified as per Applicable Laws and Applicable Permits;
- (s) to be liable for and shall indemnify, protect, defend and hold harmless the Licensor, the Licensor's officers, employees, advisors and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Licensee to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable;
- (t) not to permit any person, claiming through or under the Licensee, to create or place any encumbrance or security interest over all or any part of Licensed Space or Assets within the Licensed Space, or on any rights of the Licensee therein or under this Agreement, save and except as expressly permitted in this Agreement;
- (u) at all times, to afford access to the Licensed Space to the authorized representatives of Licensor, other persons duly authorized by any Governmental Agency having jurisdiction over the business of Licensed Space, to inspect the Licensed space and to investigate any matter within their authority and upon reasonable notice; and
- (v) to hand over the Licensed Space to Licensor upon Termination of this Agreement, in accordance with the provisions thereof;

- 5.2 The Licensee shall be solely and primarily responsible to Licensor for observance of all the provisions of this License Agreement on behalf of the Licensee, its employees and representatives and agents and any person acting under or for and on behalf of the Licensee; contractor(s) appointed for the Licensed Space as fully as if they were the acts or defaults of the Licensee, its agents or employees.
- 5.3 The Licensee shall comply with all rules and regulations notified by Licensor from time to time.
- 5.4 No tenancy/sub-tenancy is being created by Licensor in favour of Licensee under or in pursuance of this Agreement and it is distinctly & clearly understood, agreed and declared by/ between the parties hereto that:
- (a) The Licensee shall not have or claim any interest in the said Licensed Space/premises as a tenant/sub-tenant or otherwise.
 - (b) The rights, which Licensee shall have in relation to the said premises, are only those set out in this Agreement.
 - (c) The relationship between Licensor and Licensee under and/or in pursuance of this Agreement is as between Principal and Principal. Consequently, neither party shall be entitled to represent the other and/or make any commitment on behalf of and/or with traders or any other party. Furthermore, no relationship in the nature of Partnership or Association of persons is hereby being created or intended to be created between Licensor on the one hand and Licensee on the other hand in connection with and/or relating business to be operated by Licensee at the said premises.
- 5.5 Licensee shall not sub-lease, assign any of its rights, or interest in this Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.
- 5.6 Licensee shall be liable and responsible for compliance of all statutory requirements as may be applicable in respect of the operation of the Licensed Space.
- 5.7 Licensor's Obligations:
- a) Provide the Licensee access [Right Of Way] to the Location and permit the Licensee to execute its activities and obligations as per this License
 - b) Provide access to the embarking and disembarking Facility at the designated jetty as offered in the License
 - c) Provision and maintenance of the jetty facilities offered in the License.
 - d) Not give permission to any third party for operating similar business till the completion of Three (3) years from the issuance of LOI under this RFP.

6 Indemnity and Insurance

- 6.1 The Licensee hereby undertakes to indemnify and hold the Licensor harmless against all costs, damages, liabilities, expenses arising out of any third party claims relating to non-completion of the fit-out; quality of the fit-out and any other activities.
- 6.2 The Licensee hereby undertakes to indemnify the Licensor against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein and against all claims, proceedings, damages, costs charges and expenses whatsoever in respect thereof or in relation thereto.
- 6.3 The Licensee hereby undertakes to indemnify and hold the Licensor harmless against all costs, damages, liabilities, expenses arising out of any third party claims relating to operations of the Licensed Space.
- 6.4 The Licensee hereby undertakes that the Licensor shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Licensee or any of his/her contractors/ sub-contractors. The Licensee shall indemnify and keep indemnified the Licensor against all such damages and compensation; all claims proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 6.5 The Licensee shall comply with all the provisions of Labour Laws & regulation in force including but not limited to the Contract Labour (Regulation & Abolition) Act-1976 including any subsequent amendment thereof and the rules made there under, including but not limited to workmen's compensation insurance and EPF, PF, ESI and Statutory compliances. Licensee shall indemnify the Licensor for any loss and damages suffered due to violation of its provision.
- 6.6 The Licensee hereby indemnifies the Licensor against any loss, damage or liabilities arising as a result of any act of omission or commission on part of Licensee or on part of its personnel or in respect of nonobservance of any statutory requirements or legal dues of any nature.
- 6.7 The Licensee hereby undertakes to discharge all statutory obligations and liabilities in connection with employment of its personnel in the said premises. Licensee hereby indemnifies Licensor against any liability arising in connection with the employment of its personnel in the premises by Licensor. Licensee hereby undertakes to carry out police verification of its employees and submit copy of same to Authorized person of Licensor or representative authorized by the Licensor, in accordance with Licensor's policies regulations prevalent at that time.
- 6.8 The Licensee shall indemnify the Licensor from any claims that may arise from the statutory authorities against any statutory taxes, statutory dues, local levies, etc. in connection with this License.

- 6.9 The Licensee shall indemnify the Licensor from any damage charges to be incurred if the licensed space has not been handed over to the Licensor in good condition as required under this agreement.
- 6.10 The Licensee shall indemnify the Licensor from any serious accident caused due to negligence of the Licensee, resulting in injury, death to visitors or the Licensor employees or loss to property of the Licensor.
- 6.11 The Licensee shall be liable for and shall indemnify, protect, defend and hold harmless the Licensor, officers of the Licensor, employees, advisors and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Licensee to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.
- 6.12 The Licensee shall indemnify and keep indemnified the Licensor for any losses/ penalties on this account levied by any judicial/statutory authorities/courts, in case, the Licensee misused all liabilities for mis-user charges and mis-user proceedings.
- 6.13 Insurance and Waiver of Liability: The Licensee shall bear the cost, throughout the term of the license, for a comprehensive general liability insurance covering injury to or death of any person(s) while working in premises of the Licensor, including death or injury caused by the sole negligence of the Licensee or the Licensee's failure to perform its obligations under the agreement. Upon the Licensor's request, the Licensee shall submit to the Licensor, suitable evidence that the foregoing policy or policies are in effect. In the event of the default i.e. avoiding the insurance cover, the Licensee agrees and undertakes to indemnify and hold the Licensor harmless against any and all liabilities. Losses, damages, claims, expenses suffered by the Licensor as a result of such default by the Licensor.

7 Force Majeure

7.1 Neither the Licensor nor Licensee shall be liable for any inability to fulfill their commitments and obligations hereunder occasioned in whole or in part by Force Majeure, any of the following events resulting in material adverse effect, shall constitute force majeure events:

- a) Earthquake, Flood, Inundation, Landslide.
- b) Storm, Tempest, Hurricane, Cyclone, Lighting, Thunder or other extreme atmospheric disturbances.
- c) Fire caused by reasons not attributable to the Licensee or Licensor.
- d) Acts of terrorism.
- e) War, hostilities (Whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war.
- f) Strikes or boycotts, other than those involving the Licensor, its contractors, or their employees, agents etc, and
- g) Any other similar things beyond the control of the party, except court order/ court judgment.

7.2 Occurrence of any Force Majeure shall be notified to the other party within 7 days of such conditions. If any Force Majeure continues for a period of three months, the party notifying the Force Majeure condition may be entitled to, though not being obliged, to terminate this agreement by giving a notice of one week to the other party and interest free Security Deposit shall be refunded by the Licensor to the Licensee after adjusting outstanding dues, if any, payable to the Licensee.

8 Breaches/Surrender/Termination of License Agreement

Surrender of License Agreement:

8.1 The Licensee shall not have option to terminate or Exit from the License Agreement for one (1) year (i.e twelve month) from the commencement date.

In case of breach of this commitment by the licensee, complete advance License Fee deposited by the licensee shall be forfeited. In such case interest free security deposit will be refundable after deduction of applicable dues/arrears/damages etc, subject to agreement conditions.

8.2 Post completion of Three (3) year of license term from the commencement date, the Licensee shall have option to surrender the License agreement hereby created, provided that

- a) Licensee may terminate or exit the license agreement by giving advance 6 month notice during the License period, subject to fulfilling all conditions of License agreement;
- b) There is no arrear pending with the Licensee on the date of issue of surrender notice, and
- c) Licensee continues to pay all dues as per schedule to the Licensor till the date of pre-mature closure of License Agreement, and
- d) Licensee shall hand over, vacant and peaceful possession of licensed space, to Licensor, free from all encumbrances and in original condition free of cost within 15 (fifteen) days from closure of License agreement.

8.3 If Licensee satisfies the above said conditions of surrender of License Agreement, the Licensor shall refund the Interest free balance license fee and interest free security deposit after recovery/adjustment of any amount/s due to the Licensor and following the provisions of clause 3.5 of agreement.

Breach of License Agreement/ Licensee's Events of Default:

8.4 Following shall be considered as Material Breach of the License Agreement by Licensee resulting in Licensee's Events of Default:

- a) If the Licensee has failed to perform or discharge any of its obligations in accordance with the provisions of License Agreement, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to the Licensor without any contributory factor of the Licensee.
- b) If the Licensee makes any change in ownership of License by sale, merger or acquisition.
- c) If the Licensee during pendency of the License Agreement becomes insolvent or is put under receivership by a competent court.
- d) If Licensee is in persistent non-compliant of written instructions of officials authorized by Licensor.
- e) If the Licensee or any of its representatives cause an incident or accident that results in injury or

death to employees/ tourists/ other occupants/ visitors or loss to property of the Licensor.

- f) If the Licensee is in violation of any of the other clauses of License Agreement and after three written notice (unless otherwise specifically mentioned therein) from the Licensor fails to cure the Default to the satisfaction of the Licensor.
- g) If any representation made or warranties given by Licensee under this Agreement is found to be false or misleading.
- h) (If the Licensee engaging or knowingly has allowed any of its employees, agents, or contractors to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- i) If the Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the licensed space, save and except as otherwise expressly permitted under this Agreement.
- j) If a resolution for voluntary winding up has been passed by the shareholders of the Licensee.
- k) If any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Licensor, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Agreement.
- l) If the Licensee has abandoned the Licensed space for more than 30 days without written approval from the Licensor or his/her appointed representative.
- m) If the Licensee is found to be violating the list of prohibited activities as per Appendix-II.

Termination of License Agreement by Licensor:

- 8.5 Provided that in the event of application of clauses 8.4 (a) above, the Licensor shall give to the Licensee 30 (Thirty) Days' time to cure the default prior to considering the events specified therein as Licensee's events of default and in the event the Licensee remedies the default to the satisfaction of the Licensor within the cure period, the event shall not be considered as a Licensee Event of Default.

- 8.6 On operational ground or any other Administrative Exigencies: Licensor reserve the rights to terminate License Agreement by giving 30 (Thirty) Days advance notice in such exigency. License agreement shall stand terminated and Licensee shall be refunded the balance License Fee on prorata basis and balance Security Deposit after adjusting outstanding dues, if any. Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard. Licensee shall remove his belongings from Licensor's premises within 30 days of issue of termination letter, failing which these belongings shall become property of Licensor. Licensor shall be free to use/ dispose-off these belongings in whatever manner as deemed fit. Licensee shall have no claim, compensation or consideration on any account of these belongings.
- 8.7 Termination for Force Majeure: The License Agreement may be terminated for Force Majeure Reasons as specified in Article 7.

Other Conditions:

- 8.8 After termination/ surrender/ expiry of License period or due to force majeure events, Licensee shall forthwith vacate the said premises and remove movable item, equipment or appliances as well as its personnel from the said premises without causing any damage to the property of the Licensor.
- 8.9 On termination of License Agreement in the Event of Default by Licensee, Licensor shall forfeit interest free Security Deposit and advance license fee paid by Licensee after adjustment of all dues under this agreement without prejudice to rights and remedies applicable under the law.
- 8.10 Termination of this Agreement shall not release either party from its obligation to pay any sums then owing to the other party nor from the obligation to perform or discharge any liability that had been incurred prior thereto.
- 8.11 After completion of tenure of license/ pre-mature termination/ surrender, Licensee voluntarily agrees to remove all his belongings/equipment installed by Licensee inside Licensed premises within 30 days grace period from date of issue of termination of License Agreement, failing which, it shall become sole property of Licensor at zero/nil value and Licensor shall be free to do as it deems fit with the same. Licensee agrees voluntarily and un-equivocally not to seek any claim, damages, compensation or any other consideration whatsoever on this account.
- 8.12 All third party agreements, entered by Licensee, shall stand terminated on expiry of agreement between Licensor and Licensee.
- 8.13 Rights of Licensor on Termination: Licensor shall not have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the licensed space.

8.14 Licensor's Right to Re-tender the licensed space on Termination:

- (a) Licensor shall have right to re-tender licensed space on termination of this Agreement for any reasons whatsoever.
- (b) After completion of License Period, the Licensee shall not reserve any rights to the licensed Space.
- (c) Licensor if it deems necessary shall also have right to seal or lock the licensed space upon termination.

9 Dispute Resolution

9.1 Dispute Resolution

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably.

9.2 Arbitration

- (a) If the efforts to resolve all or any of the disputes through amicably fail, then such disputes or differences, whatsoever arising between the parties, shall be referred to arbitration.
- (b) The arbitration shall be conducted by a sole arbitrator to be appointed by the Secretary, Tourism Department of the UT Administration of Dadra and Nagar Haveli and Daman and Diu.
- (c) The decision of sole Arbitrator/ panel of Arbitrators shall be binding on all the parties. The cost of arbitration shall be borne by respective parties equally. The venue of such arbitration shall be Diu, Daman and Diu as per the decision of the Licensor.
- (d) The parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made.
- (e) Rules governing Arbitration Proceedings: The Arbitration Proceedings shall be governed by Indian Arbitration and Conciliation Act 1996, as amended from time to time including provisions in force at the time the references made.
- (f) During the pendency of arbitration / conciliation proceedings, the Licensee shall continue to perform and make due payments due to Licensor as per License agreement.
- (g) Jurisdiction of Courts: The Court at Diu shall have the exclusive jurisdiction to try all disputes between the parties arising out of this agreement.

10 Representations and Warranties

10.1 The Licensee represents and warrants to Licensor that

- (a) It is duly organized, 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 authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the commercial utilization (under the specified category, if any) of the licensed space;
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) It has fully complied with the below requirements of consortium, if applicable:
 - i. The number of Members in the Consortium does not exceed more than 5 (Five)
 - ii. The Lead member of the consortium maintains a share of at least 26% (Twenty six percent), for a period of three years from the date of Letter of Intent (LOI).
 - iii. All members of the Consortium are liable jointly and severally for all obligations of the Licensee in relation to the Licensed space in accordance with the Agreement.
 - iv. For any change in the Consortium composition prior approval will be acquired from the Licensor as the case may be.
- (g) The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Licensee Memorandum and Articles of Association or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Licensee is a party or by which Licensee or any of its properties or assets are bound or affected;
- (h) There are no actions, suits, proceedings or investigations pending or to the Licensee's knowledge threatened against the Licensee at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute the Licensee Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;
- (j) It has complied with all applicable law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (k) No representation or warranty by the Licensee contained herein or in any other document furnished

by the Licensee to Licensor or to any government authority in relation to Applicable Permits contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;

- (l) The Licensee 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 Licensor shall not be liable for the same in any manner whatsoever to the Licensee.
- (m) The Licensee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour is being recruited for and on behalf of Licensor. The Licensee shall at all times comply and represent to the staff and labour employed/ engaged by them the requirement for complying with Applicable Laws and applicable Permits, particularly in relation to safety and environmental regulations.

10.2 Obligation to notify change: In the event that any of the representations or warranties made/ given by the Licensee ceases to be true or stands changed, it shall promptly notify Licensor of the same.

10.3 Licensor covenants:

- (a) Licensor covenants and represents that it has good and marketable title to the said premise, free and clear of all liens, claims, mortgages or deeds of trust affecting the Licensee's possession of the licensed space, Licensee's use of the premises, or the rights granted to the Licensee hereunder.
- (b) Licensor covenants and represents that it has full and complete authority to enter into a license agreement under all terms, conditions and provisions set forth in the agreement, and so long as the Licensee keeps and substantially performs each and every term, provision and condition contained in the agreement, the Licensee shall peacefully and quietly enjoy the premises without hindrance or disturbance by Licensor or by any other person(s) claiming by, through or under or in trust for Licensor.
- (c) On paying the License Fee, Licensee hereby reserved and observing & performing the several covenants and stipulations on its part and the conditions herein contained, shall peacefully hold and enjoy the licensed space throughout the said term without any interruptions by the Licensor or by any person claiming by, through, under or in trust for Licensor.
- (d) Licensor shall provide, if required for seeking any permission pertaining to commercial activities from any Government Agency, necessary documents pertaining to Licensor properties.

11 Miscellaneous

- 11.1 Licensee shall comply with the laws of land including State Pollution Control Board guidelines. Licensor shall not be held liable for any change/modification in these laws which adversely affect this agreement. Licensee shall have no right/ claim in this regard, whatsoever the reason may be.
- 11.2 Licensee shall bear all salaries, wages, bonuses, payroll taxes or accruals including gratuity, superannuating, pension and provident fund contributions, contributions to worker's compensations funds and employees state insurance and other taxes and charges and all fringe and employee benefits including statutory contributions in respect of such personnel employed/deployed by the Licensee and these personnel shall at no point of time be construed to be employees of Licensor and the Licensee shall be solely responsible for compliance with all labour laws which shall include all liabilities of the Provident Fund Act, ESI Act, Workmen's compensation Act, Minimum Wages Act and other Labour Welfare Act in respect of its personnel. The Licensee shall indemnify Licensor from any claims that may arise in connection with above.
- 11.3 Employees conduct: The Licensee shall ensure that all persons employed behave in an orderly and disciplined manner and that the said employees are prohibited from carrying on any unlawful, unfair activities or demonstrations. The personnel deployed shall be decent, courteous and without any adverse or criminal background. In this connection, Licensee shall be required to furnish declaration to Licensor with respect to all his personnel deployed. Further within 45 days of issue of LOI, Licensee shall submit police verification report in respect of all its personnel shall be furnished by the Licensee to Licensor. All the Licensee's personnel shall be required to possess ID card while working in Licensor's premises as per prevailing procedure. Access inside other premises of the Licensor's property shall not be allowed without prior approval from authorized personals from Licensor.
- 11.4 Misuse: The Licensee shall use the granted area under the agreement only for the services under the specified category, except activities and items prohibited as per Appendix-II of this agreement, and shall not use the same for any other purposes. In case, the Licensee carries on any business or uses the said premises for any other purposes other than the specified category the license shall deemed to have been misused and Licensor shall immediately terminate the said agreement. All liabilities for mis-user charges and mis-user proceedings; if so initiated shall be that of the Licensee only. The Licensee shall indemnify and keep indemnified Licensor for any losses/ penalties on this account levied by any judicial/statutory authorities/courts.
- 11.5 Signage:
- (a) The Licensee shall have the right to put up signage's of size as approved by the Authorized person of Licensor displaying generic name of the Licensed Space. The signage need to confirm to all governmental laws, regulations or ordinance relevant thereto.
- (b) The Licensee shall need to obtain a written approval from Licensor by way of a notice before putting up any form of signage and Licensor reserves the right to refuse or to suggest an alternation to the same. The signage shape and location etc are subject to architectural controls to be issued by Licensor.

- (c) Placement of Signage without the permission of Licensor or placement in non-approved locations shall attract a penalty on Licensee as deemed fit by the Licensor. In case of persistence default, Licensor reserve the right to terminate the agreement with forfeiture of the (interest free) Security Deposit and advance license fee paid in its favour after adjustment of all dues what so ever.

11.6 Notices:

Licensor and Licensee voluntarily and unequivocally agrees –

- (a) That any notice to be served upon Licensor shall be sufficiently served to the correct communication address given below:

Authorized Representative of Licensor:

Address of Communication of Licensor:

- (b) That any notice which may be required to be served upon the Licensee shall be served and given if delivery by Registered AD/ Speed Post/ Courier at the Address given above in clause 11.6 (a) of the License Agreement or delivered in person by the authorized representative of Licensor.
- (c) That any notice or correspondence under the terms of this License shall be in writing by Registered post/ Speed Post/ Courier or delivered personally. All activities including day to day management, billing, cancellation/termination/surrender etc. shall be carried out from the office of the Authorized person or by Licensors duly authorized representative.
- (d) No instruction/ notice of any party if not communicated in writing, shall be entertained by the other party.

APPENDIX-I Indicative Anchor Location and Movement Route



Note: Actual Route will be approved by Collector, Diu.

APPENDIX-II Prohibited Activities

Prohibited activities at Development and operation of Floatel / Floating restaurant in Diu

- (a) Any product/Service, sale of which is unlawful/ illegal or deemed unlawful under any Act.
- (b) Any product, storage and sale of which may lead to or be considered as a fire hazard; such as fire crackers, industrial explosives, chemicals, etc.
- (c) To operate any casino / gambling / illegal/ unauthorized activities
- (d) Sale of tobacco and tobacco products.
- (e) Use of loud speakers
- (f) Use of musical instruments and band etc. without requisite permissions/approvals from concerned/ Competent Authority.

ANNEXURE-III Declaration cum Undertaking

(on letter head of Applicant)

To

Chief Executive Officer,
Diu Smart City Ltd,
Diu

I/We hereby declare that, I/we shall adhere to the 'Disaster Management Protocol',

Signature of Applicant

Date: _____