



## DIU SMART CITY LIMITED

CIN:U74999DD2018PLC009814

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NO. DMC/DIU/CONST/SMART CITY/2019-20/203

Dated: 16-07-2020

Tender No. 3/2020-21/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.	Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract	Rs. 10,000/-	Rs. 10,00,000/-

Note All details are available in RFP at [www.ddtender.com](http://www.ddtender.com) , [www.diu.gov.in](http://www.diu.gov.in).

1.	Downloading of RFP Documents	17/07/2020 to 05/08/2020 15:00 hrs
2.	Pre bid meeting	27/07/2020 11:00 hrs
3.	Date of Online submission	07/08/2020 16:00 hrs
4.	Date of Physical document submission	14/08/2020 16:00 hrs
5.	Date of online opening of technical bid	14/08/2020 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.	

  
(Gopal Jadhav)  
Manger, Construction,  
DSCL-Diu  
Email:- [diudscl@gmail.com](mailto:diudscl@gmail.com)  
Phone:- 02875 252126

# REQUEST FOR PROPOSAL

## Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract



Tender No. **03/2020-21/DSCL-Diu**

Bid due date: 07-08-2020

up to 1600 hrs.

**Diu Smart City Limited**

**WEBSITES:** <https://ddtenders.gov.in>

*(This document is meant for exclusive purposes of submitting the proposal against this RFP document and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued)*

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## Disclaimer

The information contained in this Request for Proposals document (**the “RFP”**) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of DSCL or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

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

DSCL makes no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of this RFP. DSCL may in its absolute discretion, but without being under any obligation to do so, update, amend, or supplement the information in this RFP.

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

DSCL, its employees and advisors make no representation or warranty and shall not be liable to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, Statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this e-bid Stage.

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

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

The issue of this RFP does not imply that DSCL is bound to select a Bidder or to appoint the Selected Bidder or O&M Operator, as the case may be, for the Property and DSCL reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by DSCL or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will

remain with the Bidder and DSCL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process. No contractual obligation whatsoever shall arise from the RFP process until a formal contract is executed by the duly authorized signatory of DSCL and the Bidder.

DSCL reserves its right to withdraw from the process at any stage of the process and/or modify the process or any part thereof or to vary any terms at any time or stage without assigning any reasons whatsoever. In such an event, no financial obligation of whatsoever nature shall accrue to DSCL or any of its respective officers, employees, advisors or agents.

Each Bidder's procurement of this RFP constitutes its agreement to, and acceptance of, the terms set forth in this Disclaimer. By acceptance of this RFP, the recipient agrees that this RFP and any information herewith supersedes document(s) or earlier information, if any, in relation to the subject matter hereto.



## Definitions and Interpretation

### Definitions:

**'Agreement'** shall mean the Operation and Maintenance Agreement to be executed by the Department of Tourism Diu, UT Administration of Daman and Diu in respect of the Project in favour of the company to be incorporated by the Selected Bidder under the Companies Act, 2013 for implementation of the Project in accordance with the provision of the RFP document.

**'Authority'** shall mean Department of Tourism, Diu, a department under the UT Administration of Daman and Diu.

**'Bid'** shall mean the response submitted by the bidder in response to the RFP in accordance with the terms and conditions of this RFP, including clarifications and/or amendments, to the extent permitted, thereto.

**'Bid Security / Earnest Money Deposit'** shall mean the security furnished by the bidder as stipulated in the RFP document.

**'Bidder'** shall mean the bidding entity, company or consortium of companies, as the context may admit or require, that submit their bid.

**'Concessions Agency'** shall mean Diu Smart City Ltd ("DSCL"), is a SPV company formed by UT Administration of Daman & Diu and Diu Municipal Council, Diu, with the objective of implementing Smart City development in Diu.

**'Due Date'** shall mean the last date and time for receipt of the Bid, and as mentioned in this RFP.

**'Eligibility Criteria'** shall mean the General, Financial and Technical criteria stipulated in this RFP documents, which the bidder is required to meet in order to be eligible for evaluation of his Bid.

**"INR"** means Indian Rupees

**'Letter of Intent'** or **'LOI'** shall mean the letter to be issued by Authority to the Selected Bidder conveying intention of award of the Project, in accordance with the terms of this RFP.

**'Performance Security'** shall mean the irrevocable & unconditional bank guarantee furnished by the Selected Bidder as per the terms of the RFP.

**'Power of Attorney'** shall mean the Power of Attorney, in the format provided in this RFP, to be furnished by the bidder authorizing a person to sign the Bid and act for and on behalf of the bidder during the bidding process .

**'Request for Proposal'** or **'RFP'** shall mean the Request for Proposal document including the draft Agreement, Annexure and Addendum thereof issued by DSCL for selection of a suitable operator to implement the Project, and shall include any modifications, amendments or alterations or clarifications thereto.

**"Selected Bidder"** shall mean the bidder selected, pursuant to the bid evaluation process set forth in this RFP document, for implementation of the Project and to whom LOI has been issued by Authority.

### Interpretation:

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

Words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender and vice versa;

Unless otherwise stated, a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital is a reference to a Clause, Sub-Clause, Paragraph, Subparagraph, Annex, Exhibit, Attachment, Schedule or Recital of this RFP; the table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;

A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof; The terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed;

Any reference to a person shall include such person's successors and permitted assignees; A reference to a "writing" or "written" includes printing, typing, lithography and other means of reproducing words in a visible form;

Any date or period set forth in this RFP shall be such date or period as may be extended pursuant to the terms of this RFP;

A reference to "month" shall mean a calendar month, a reference to "week" shall mean a calendar week and a reference to "day" shall mean a calendar day, unless otherwise specified;

The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this RFP mean and refer to this RFP and not to any particular Article, Clause or Section of this RFP. The terms "Article", "Clause", "Paragraph" and "Schedule" mean and refer to the Article, Clause, Paragraph and Schedule of this RFP so specified;

In the case of any conflict, discrepancy or repugnancy between the provisions of RFP documents, provisions of the Operation and Maintenance Agreement (as applicable) shall prevail over and supersede the provisions of other documents;

The descriptive headings of Articles and Sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content thereof and shall not be used to interpret the provisions of the Operation and Maintenance Agreement;

## 1. INTRODUCTION

### 1.1. Background

- 1.1.1. Diu Smart City Ltd (“DSCL”), is a SPV company formed by UT Administration of Daman & Diu and Diu Municipal Council, Diu, 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 undertaken various Property for creation of tourist infrastructure. One such initiative is redevelopment of government Circuit House properties into Premium hotel facilities for tourists.
- 1.1.2. This RFP is about the hotel property known as Fort Circuit house (“The Property”) located near Diu Fort in Diu. This property belongs to the Tourism Department, Diu, UT Administration of Daman & Diu, which has decided to hire a reputed hotel operator for operating and maintaining the aforesaid Property as a 3-star and above category hotel as per Guideline of Ministry of Tourism Gol.
- 1.1.3. The aforesaid Property is one of the finest hotels properties in Diu comprises of a 2,900 Sqm and having 42 guest rooms, restaurant, Meeting room, Courtyard, Recreational Area, Reception and lounge.
- 1.1.4. This Request for Proposal (“RFP”) is for the selection of an Agency for Operation and Maintenance for the period of 5 years which is extendable for maximum 2 more year 1 year at a time.
- 1.1.5. The RFP contains information with respect to the Project, bid evaluation process, bid submission, and eligibility criteria. Every proposal shall be evaluated in terms of financial and technical capability of the Bidder.

### 1.2. Project Summary

S.N	Parameters	Details
1.	Project Title	Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract
2.	Location	Near Diu Fort, Diu
3.	Authority	Tourism Department, Diu
4.	Scope of Work	Operation and maintenance of the Hotel property on Management Contract on Revenue Share Basis

5.	Details of Project Facilities	<p>Project Facilities shall comprise of:</p> <ul style="list-style-type: none"> <li>• Hotel Plot admeasuring 2900 Sqm</li> <li>• Hotel building (G+2 floor) Capacity – 42 rooms</li> <li>• Interiors and immovable items (fixtures, fittings etc.)</li> <li>• Support facilities – Reception and Lounge Area, Restaurant, Kitchen, Meeting Room, Courtyard, Store and Linen Room, Recreation Room / Tea Lounge, Parking etc.</li> <li>• Total built-up area (BUA) -Approximately 4,562 sqm</li> <li>• Any other associated facility located within the Project Site.</li> </ul> <p>(For details, please refer to Appendix D1 of the RFP)</p>
6.	Format	Management Contract on Revenue Share Basis
7.	Term of the Agreement	5 Years (Extendable by maximum 2 more years 1 year at a time)
8.	Payments to the Authority	<p><b>Revenue Share to be paid to the Authority shall be higher of</b> %age revenue share of gross revenue from the Project, to be quoted by Bidder (Minimum revenue share should be 10% of gross revenue)</p> <p>or</p> <p>Minimum Guarantee amount of INR 75 Lakh per annum (The revenue share amount would be payable in two half-yearly Installments per annum. The Minimum Guarantee amount shall be increased at a rate of 5% per year).</p>
9.	Bid processing fee	Non-refundable INR 10,000/- (Rupees Ten Thousand Only)
10.	Bid Security/ EMD	INR 10 Lakh (Rupees Ten Lakh only), via Demand Draft in favour of Chief Executive Officer, DSCL, Diu
11.	Performance Security	INR 75 Lakh (Rupees Seventy Five Lakh only), in the form of Bank Guarantee, FDR, shall be submitted to the Authority within 30 days from the date of LoA in the format prescribed as part of this RFP.
12.	Contact Person - Concessioning Agency	<p>Chief Executive Officer, Diu Smart City Ltd. Telephone No: :+91 2875252126, 9586705143 Email ID :- diudscl@gmail.com</p>

### 1.3. Important Dates:

Sr. No	Event Description	Date
1	Availability of Bid Documents at online portal	17-07-2020
2	Last date for receiving queries	25-07-2020 up to 16:00 hrs.
3	Pre-Bid Conference	27-07-2020 from 11:00 hrs. To 1300 hrs.
4	Last date for downloading the Bid documents from the website	07-08-2020 up to 15:00 hrs.
5	Last date for Submission of e-bids	07-08-2020 up to 16:00 hrs.
6	Opening date and time of technical e-bids	14-08-2020 at 17:00 hrs.
7	Announcement of short- listed Bidders at qualification stage	To be intimated
8	Opening date and time of Financial Bid	To be intimated
9	Issue of Letter of Award	To be intimated later
10	Validity of Bids	180 (one hundred eighty) days from Bid Due Date.
11	Signing of Operation and Maintenance Agreement	Within 60 days of issue of LOA.

### 1.4. Project Site:

The hotel property is situated near the Diu Fort in Diu.

#### Location Map





View of the hotel property:



## 2. Scope of Work

### 2.1. Extent of the Property

- 2.1.1. Tourism Department, Diu UT Administration of Daman and Diu, **(the Authority)** has a hotel Property in Diu near the Diu Fort which is situated on a plot of 2,900 Sqm. The Authority is inclined to appoint a hotel operator to:
- Operate maintain and promote the hotel property (**The Property**) as a 3 star and above category hotel as per the Guidelines of Ministry of Tourism, Gol.
- 2.1.2. The property shall be given to the Operator on Management Contract (Operation, Maintain and Transfer) basis as elaborately mentioned in various provisions of the Draft Agreement. Moreover, it is be noted that the Authority shall retain ownership of the land and all facilities, including Project Facilities, at all times.
- 2.1.3. The Agreement Period for the Project shall be 5 (Five) years which is extendable for maximum 2 more years 1 year at a time.

### 2.2. Responsibilities of the Authority

- 2.2.1. The Authority shall be responsible for handing over the completed Project Facilities to the Operator within the stipulated timeframe given in Agreement. The Project Facilities shall be handed over to the operator with completed civil and interior/Furniture works as detailed in Appendix-D1 to this RFP. The Authority shall provide the property complete with immovable assets, Furniture, interiors & fit-outs for furnishing of the Project Facilities on “as is where is basis” for the purpose of operations and maintenance.
- 2.2.2. The Authority shall be responsible for providing basic utilities including water connection, power connection and HVAC to the property up to tap-off point outside the building.
- 2.2.3. The Authority may facilitate without any obligation for obtaining all licenses from relevant authorities for the operation of the hotel.

### 2.3. Rights and Responsibilities of the Operator

- 2.3.1. The Operator shall procure and manage on its own, all movable/consumables items including crockery, bed linens, toiletries, utensils, cutlery, stationary etc. necessary for Hotel operations. The procurement shall be completed before Commercial Operations Date (COD) within 90 days from the Appointed Date. The Operator shall not harm / damage the civil structure of the Hotel property, nor shall it make any additions to the existing structure.



- 2.3.2. The Operator shall be responsible for complete operation and maintenance of the Project Facilities in accordance with good industry practices along with expenditure.
- 2.3.3. The Operator shall have the exclusive right to market, manage bookings, fix charges / rates and retain revenues from operations of the Project Facilities. However, at the end of each quarter, the operator will provide a detailed breakup of the revenue to UT Administration. The Operator shall be responsible for bearing all the expenditure associated with operation and maintenance of project facilities.
- 2.3.4. Maintain the entire hotel property including but not limited to building, garden, public area and movable properties like furniture, electrical installations, etc. in good condition during the entire operations period and shall compensate the UT Administration for any damages to such properties at the end of contract period.
- 2.3.5. The Operator shall be allowed to sub-license the allied Project Facilities like spa, restaurant, gym, conference facility, swimming pool and the like. The operator cannot sub lease the operation and maintenance of the property. All such sub-licenses shall be co-terminus with the Agreement. The Operator shall obtain prior approval of the Authority for a format of the standard sub-license agreement before its execution with any sub-licensee. In case, any deviation in this format of standard sub-license agreement is required, the Operator shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee.
- 2.3.6. Recruit the managers and staff in the Hotel for its smooth functioning and to maintain the level of service as required for the property.
- 2.3.7. No additions, alterations, structural modifications to the existing building shall be made in any manner without the written consent of the Collector, Diu.
- 2.3.8. The building, furniture and other properties shall be insured against fire, rioting and other possible losses and the insurance policy.
- 2.3.9. Upon expiry or termination of the Agreement, the Operator shall promptly handover the property / facilities to the Authority, free of all liabilities and encumbrances in good condition and as they had received the property at the start of the tenure. The property / facilities, including all movable and immovable assets. It must be noted that this will not include any movable items brought in by the Operator during the Project tenure.
- 2.3.10. In lieu of the rights granted for Concession Period, the Operator shall make certain payments (as per Financial Proposal) to Authority.
- 2.3.11. Maintain books of accounts as per proper accounting standards and will have them audited by statutory auditor on a yearly basis.



2.3.12. The Operator must reserve 4 Rooms for the UT Administration Diu, (with applicable discounted rate as per UT employee's eligibility). These rooms can be booked for public only with prior consent of Collector Diu.

2.3.13. The Operator must reserve additional 10 rooms for allocation on 48 hrs notice as per request given by the Collector Diu / Tourism department Diu, for UT Administration employees on Current room Tariff basis.

2.3.14. The Successful Bidder shall obtain all licenses from relevant authorities for the operation of the hotel.

## 2.4. Commercial Consideration

2.4.1. **Payment to the Authority:** The Operator shall pay to the Authority, Revenue Share amount, which shall be higher of:

%age revenue share of gross revenue from the Project, to be quoted by Bidder (Minimum revenue share should be 10% of gross revenue)

or

Minimum Guarantee Payment amount of – INR 75 Lakh per annum

(The revenue share amount would be payable in two half-yearly Installments per annum. The Minimum Guarantee amount shall to be increased at a rate of 5% per year)

The term “**Appointed Date**” shall mean the date on or before which all Conditions Precedent to the Agreement are met by both the Selected Bidder and the Authority.

The term “**Commercial Operations Date**” or “**COD**” shall mean the earlier of:

- a. Date for which the Operator takes the first booking for the property;
- b. A date 90 days from the Appointed Date.

The term “**Gross Revenue**” shall mean total gross revenue received by the Operator from the property (prior to the deduction or allowance of operational expenses (including fee of sub-license operator and/or salary), taxes, etc.) and include:

**Income from Hotel:** The Operator shall be entitled to charge for services, including room rental, Conference Hall, executive lounge, food and beverage etc., provided at the proposed property.

**Miscellaneous Income:** Any other income that the Operator may receive for other services offered, pursuant to its rights and responsibilities related to this Project.

2.4.2. All Payments to the Authority shall be made by the Operator within 15 days from the last day of any installment period.

- the first Installment Payment to the Authority shall be made within 15 days from the end of the First Installment Period.
- the last Installment Payment to the Authority shall be made within 15 days from the Expiry Date / Termination Date of the Agreement.

2.4.3. **Performance Guarantee:** The Selected Bidder shall deposit with the Authority upon signing of the Agreement, Performance Security of INR 75 Lakh (Rupees seventy five Lakh only) in the form of a bank guarantee or FDR valid till 180 days from expiry of project tenure.

### 3. Brief description of bidding process

#### 3.1. Bidding Process

DSCL has adopted an online bidding process for selection of an operator for awarding the Property collectively referred to as the "Bidding Process" for selection of the Bidder for award of the Property. The e-tendering process is online at e-portal (URL:- <https://ddtenders.gov.in>).

- I. The Bidders (the "Bidders"), which expression shall, unless repugnant to the context be required to upload their Bids (the "Bids") online in two parts i.e.
  - a. Technical Bid.
  - b. Financial Bid.
- II. The Bidder shall pay to DSCL a sum of Rs. 10,000/- (Rupees Ten Thousand Only) as the cost of the RFP document. The cost paid in the form of a Demand Draft issued by one of the Scheduled Commercial Banks in India in favor of '**Chief Executive Officer, DSCL, Diu**', payable at Diu. The copy of the Demand Draft should be uploaded along with technical bid submission at e-portal. The original demand draft should be submitted as per clause No 6.3.4
- III. The e-bid shall be summarily rejected if it is not accompanied with the details of payment of the Bid processing fee.
- IV. The evaluation stage of the Bidding Process involves evaluation of technical bids in accordance with provisions of this RFP. At the end of this stage, DSCL shall shortlist qualified Bidders fulfilling the qualification criteria.
- V. The Bidders shortlisted after qualification stage shall be eligible for opening and evaluation of their Financial Bids.
- VI. The Bidding Documents inter alia include the draft Operation and Maintenance Agreement for the Property. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- VII. Bid Security/EMD/Proposal Security of Rs. 10,00,000/-(Rupees Ten Lakh Only) (the "Bid Security"), will remain refundable not later than 60 (sixty) days from the Bid Due Date or the selection of the Selected bidder, whichever is later, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a performance security in terms of the Bidding Documents ("Performance Security") or the expiry of 180 (one hundred eighty) days of the Bid Due Date, whichever is earlier. Bid Security shall be refunded without any interest.
- VIII. Selected bidder must submit a bank guarantee or FDR of Rs 75,00,000/- (Seventy five Lakh Only) valid for period of 5 year from effective date. The selected bidder must also agree to extent duration of validity of performance security in mutual agreement with the Authority.

- IX. Performance security shall be submitted in the form of Bank Guarantee or FDR from the Scheduled Bank having branch at Diu.
- X. During the bidding stage, Bidders are entitled to examine the Property in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Bid for implementation of the Property.
- XI. The Bidder may submit their queries, if any, before the last date of receiving queries as specified in this RFP. DSCL shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive bidding process. However, queries received after prescribed date shall not be entertained.

### 3.2. Schedule of Bidding Process

3.2.1. The Authority shall endeavor to adhere to the following schedule:

Sr. No.	Event Description	Date
1	Availability of Bid Documents at online portal	<b>17-07-2020</b>
2	Last date for receiving queries	<b>25-07-2020 up to 16:00 hrs.</b>
3	Pre-Bid Conference	<b>27-07-2020 from 11:00 hrs. To 1300 hrs.</b>
4	Bid Due Date (Submission of Technical Bid online)	<b>07-08-2020 up to 16:00 hrs.</b>
5	Opening date and time of technical e-bids	<b>14-08-2020 at 17:00 hrs.</b>
6	Announcement of Short-listed Bidders	<b>To be intimated</b>
7	Opening date and time of Financial Bid	<b>To be intimated</b>
8	Issue of Letter of Award	To be intimated later
9	Acceptance of LoA	Within 14 days of issue of Letter of Award
10	Signing of Agreement between the Authority & Selected Bidder	Within 60 days of issue of LOA.
11	Validity of Bids	180 days of Bid Due Date

### 3.3. Pre-Bid Conference

3.3.1. A Pre-Bid Conference shall be held to clarify issues and to answer questions on any matter that may be raised at that stage. The date, time and venue of the Pre-Bid Conference shall be:

Date: 27-07-2020

Time:-1100 Hrs. to 1300 Hrs.

Venue: -

Diu Smart City Limited

C/O Diu Municipal Council, Fort Road, Diu,

UT of Daman & Diu

Pin 362520

E-mail: [diudscl@gmail.com](mailto:diudscl@gmail.com)

Or a venue intimated on the portal (<https://ddtenders.gov.in>)

- 3.3.2. The Bidder should send in their queries at least 1 day before the date mentioned in the Pre-Bid conference in the following format:

SI. No	RFP Document Page No.	Existing Provision	Clarification required	Suggested change

- 3.3.3. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the DSCL. The DSCL shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## **4. Instructions to Bidders**

### **4.1. Scope of the Bid**

- 4.1.1. DSCL wishes to receive Bids in order to select experienced and capable Bidders for the Property. The Financial bids of bidders fulfilling the Technical qualification criteria shall be subsequently evaluated.

### **4.2. General terms of Bidding**

- 4.2.1. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Property before submitting their Bids and satisfy itself of the title, ownership, physical condition of the Property and the assets lying therein and DSCL has made no representation and/ or warranty, express or implied, as regards the Property, including but without limitation to the quality, condition, merchantability and suitability thereof.
- 4.2.2. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Operation and Maintenance Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Operation and Maintenance Agreement.
- 4.2.3. Any condition or qualification or any other essential stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 4.2.4. The documents including this RFP and all attached documents, provided by DSCL are and shall remain or become the properties of DSCL and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. DSCL will not return to the Bidders any Bid, document or any information provided along therewith.
- 4.2.5. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical advisor of DSCL or the Tourism Department, UT of Daman and Diu, in relation to the Property is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Property during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Operation and Maintenance Agreement. In the event any such advisor is engaged by the Selected Bidder or O&M Operator, as the case may be, after issue of the LOA or execution of the Operation and Maintenance

- 4.2.6. Agreement for matters related or incidental to the Property, then notwithstanding anything to the contrary contained herein or in the LOA or the Operation and Maintenance Agreement and without prejudice to any other right or remedy of DSCL, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which DSCL may have thereunder or otherwise, the LOA or the Operation and Maintenance Agreement, as the case may be, shall be liable to be terminated without DSCL being liable in any manner whatsoever to the Selected Bidder or O&M Operator for the same. For the avoidance of doubt, this disqualification shall not apply where such advisor was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such advisor is engaged after a period of 3 (three) years from commencement of the Property.
- 4.2.7. This RFP is not transferable.
- 4.2.8. Award of contract pursuant to this RFP shall be subject to the terms of Bidding Documents.
- 4.2.9. No Bidder shall submit more than one Bid for the Project. Violation of this shall lead to disqualification of the Bidder.
- 4.2.10. Any currency for the purpose of the Proposal / Bid shall be in form of Indian National Rupee (INR).
- 4.2.11. The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. DSCL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 4.2.12. DSCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to this RFP and the Bidder shall, when so required by the DSCL, make available all such information, evidence, and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the DSCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the DSCL there under.
- 4.2.13. DSCL reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.
- 4.2.14. Save and except as provided in this RFP, DSCL shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

- 4.2.15. DSCL may also on its own motion for any reason, if deemed necessary, issue interpretations and clarifications to all Bidders through the issuance of Addenda through its website - <https://ddtenders.gov.in> at any time prior to the proposal date. The clarifications and interpretations can be the DSCL's own initiative or in response to clarifications requested by the Bidder and shall be deemed to be part of this RFP and binding upon all the Bidders. Verbal clarifications and information given by DSCL or its employees or representatives shall not in any way or manner be binding.
- 4.2.16. The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. DSCL, reserves the right to reject any Proposal that does not meet this requirement. Proposal Validity Period and/or Proposal Security shall be extended for a specified additional period at the request of DSCL. A Bidder agreeing to the request will not be allowed to modify his Proposal, but would be required to extend the validity of his Proposal Security for the period of extension. The Proposal Validity Period of the Successful Bidder shall be extended till the date of execution of the Agreement.
- 4.2.17. Bids shall be deemed to be under consideration immediately after they are opened and until such time the DSCL makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, DSCL and/ or their employees/ representatives on matters related to the Bids under consideration.
- 4.2.18. It would be deemed that prior to the submission of Proposal, the Bidder has made a complete and careful examination of:
- a. The requirements and other information set forth in this RFP Document.
  - b. The various aspects of the Project including, but not limited to the following:
    - i. The Project Site, Project Facilities, structures, access roads and public utilities in the vicinity etc.;
    - ii. All other matters that might affect the Bidder's performance under the terms of this RFP Document, including all risks, costs, liabilities and contingencies associated with the Project.



## 5. Eligibility Criteria

The Bidder, for qualification and selection, may be an existing company incorporated under the Indian Companies Act, 1956/ 2013, or a Consortium thereof, coming together to implement the project. Such consortium shall necessarily incorporate a Company (SPV), within 60 days from the date of issuance of LOA or such extended period as may be reasonably allowed by DSCL and prior to the execution of Operation and Maintenance Agreement.

The bidder shall satisfy the following technical eligibility criteria:

- The bidder shall have prior experience of Operation and Maintenance of a hotel of 3 (three) star or above category having a minimum of 40 (Forty) rooms (in a single facility) In India Last 7 Financial Year.
- Minimum Average Annual Turnover of INR 4 crores from hotel operations in Last 3 Financial Year
- Net Worth of the Company/ lead bidder shall be Positive

### 5.1. Proposal Submitted by a Consortium

5.1.1. There can be a maximum of 3 (Three) members in a Consortium, who can be individuals, Partnership firms limited liability partnerships and/ or companies. However, after the expiry of the Lock- in Period (defined herein below), this number may be increased to a maximum of 3 (Three) members.

5.1.2. The financial eligibility criteria set out in Clause 5.2 below must either be satisfied:

- a. by the Lead Member of the Consortium; or
- b. jointly by all the members of the Consortium in proportion to their respective shareholding in the SPV as contemplated in Clause 5.2.1 below;

And the technical eligibility criteria set out in Clause 5.3.1 below must be satisfied by any one member of the Consortium.

5.1.3. The Joint Bidding Agreement to be signed by all Consortium members and uploaded along with the e-bid, setting out inter-alia the shareholding pattern of the SPV and clearly indicating the Lead Member's shareholding in the SPV which should not be less than 51% (Fifty-one percent) of the paid-up share capital of the SPV.

- 5.1.4. No change in the constitution of consortium will be allowed except in accordance with the provisions of this RFP and the Operation and Maintenance Agreement. Proposals submitted by a Consortium must provide a written agreement (Joint Bidding Agreement) to be signed by each member in that Consortium and a letter on their respective letter-head(s) duly signed by the authorized signatory of the member(s) (where applicable) and in case of individuals, on a plain paper signed by such member, indicating the proposed equity ownership of such member in the SPV in terms of the Joint Bidding Agreement. One of the Consortium members would be required to be nominated as lead member (“Lead Member”).
- 5.1.5. The Consortium shall, inter alia form a Special Purpose Vehicle (SPV) registered under **the Companies Act 2013** in India for the implementation of the agreement. SPV shall be formed after issuance and acceptance of Letter of Award (“LOA”) within 60 (sixty) days from the date of issue of LOA or such extended period as may be reasonably allowed by DSCIL and prior to the execution of the Operation and Maintenance Agreement. The SPV would enter into an Operation and Maintenance Agreement and subsequently carry out all the responsibilities of the Operator and undertake the management of the Property as stipulated in the Operation and Maintenance Agreement. The proposed shareholding of the members of the Consortium in the SPV must be in compliance with the criteria specified in the RFP document. However, the membership structure of the Bidder shall not be changed by the Bidder except in accordance with the provisions of this RFP and the Operation and Maintenance Agreement.
- 5.1.6. In case of a Consortium, the following requirements pertaining to the paid-up share capital of the SPV shall be complied with:
- a. The Lead Member of the Consortium shall maintain a minimum equity component of at least 51% (Fifty-one percent) for a period of 3 (three) consecutive years commencing from the commercial operation date (“Lock-in Period”), in the SPV so formed under this Clause. The Lead Member, however, may dilute its shareholding in the SPV after the expiry of the Lock-in Period.
  - b. All other members of the Consortium shall jointly hold the remaining paid up share capital of the SPV on a fully diluted basis for a minimum period of 3 (three) years commencing from the COD.
  - c. Any dilution in the shareholding of the SPV (whether by fresh issue of shares or securities convertible into shares or direct or indirect transfer or both) will require the prior written consent of Authority.
  - d. Notwithstanding anything to the contrary contained in this RFP, the exit related provisions contained in this Clause 5.1.6 will only be applicable in case of a Consortium.

- 5.1.7. All Members of the Consortium shall be liable jointly and severally for the O & M of the Property in accordance with the terms of the Operation and Maintenance Agreement and a statement to this effect shall be included in the Joint Bidding Agreement. DSCL may require such documents/ undertakings/ indemnities as it may deem fit from consortium members before or at the time of issuance of LOA/ signing of the Operation and Maintenance Agreement.
- 5.1.8. Subject to the provisions of Clause 5.1.6 above, the Lead Member nominated at the time of submission of the Proposal shall continue to be the Lead Member of the Consortium. Such Lead Member shall hold authorization in the form of Power of Attorney. The Proposal must designate one or more person(s) to represent the Bidder in its dealings with DSCL. Unless specifically advised to the contrary, DSCL will assume that the person (s) designated is authorized to perform all tasks, including, but not limited to, providing information, responding to inquiries and entering into contractual commitments on behalf of the Company or the Consortium as the case may be.
- 5.1.9. Each member of the Consortium shall upload a signed letter (on its letter head, if applicable, or on a plain paper in case of individuals) with the Proposal, which states that, the said member:
- a. Has reviewed the entire Proposal/ Bid.
  - b. Is in accordance with each key element of the Proposal/ Bid, including, but not limited to, its technical and price components, description of the member's responsibilities and commitments to the Property, and the designated person(s) who will represent the Consortium during the negotiation process. Any substantive exception or caveat should be addressed in the enclosed letter.
  - c. Has participated in only one Proposal/ Bid for this Property.
  - d. Each of the Consortium members will be jointly and severally liable to DSCL.
- 5.1.10. All pertinent information that may affect the performance of the responsibilities of any Consortium member such as ongoing litigation, financial distress, or any other such matter must be disclosed with the Proposal.

## **5.2. Financial Eligibility criteria**

- 5.2.1. The Bidder should have a minimum positive Net Worth of at least INR 2,00,00,000 (Indian Rupees Two crores only) in the close of preceding financial year. The Bidder must establish the minimum positive Net Worth specified and provide details as per format of Appendix-B2.

In case of a Consortium, the minimum positive Net worth as specified above shall either be satisfied:

- a. by the Lead Member of the Consortium; or
- b. by all the members jointly to be calculated by aggregating the Net Worth of each

member of the Consortium,

For the purposes of this RFP Document, Net Worth shall mean:

- a. Paid-up share capital + reserves created out of profits and securities premium account) less (aggregate value of accumulated losses + deferred expenditure + miscellaneous expenditure not written off + reserves created out of revaluation of assets + write-back of depreciation and amalgamation), in case of companies; and
- b. The difference between the total assets and total liabilities, as per the audited financial statements of the bidders, being individuals undertaking any business and maintaining a balance sheet, partnership firms and LLPs.
- c. The difference between the total assets and total liabilities, details of which have been submitted by the bidder in the statement of assets and liabilities of a bidder in the form set out in Appendix B2 Part 1 as part of the Technical Bid ("Statement of Assets and Liabilities"), in case of bidders being individuals other than those mentioned in (b) above.

For the purpose of this RFP, total assets mean the total assets of a bidder (in case of a Consortium, of each of its Member) as indicated by the Bidder in its audited financial statements or the Statement of Assets and Liabilities, as the case may be and total liabilities means the total liabilities of Bidder (in case of a Consortium, of each of its Member) as indicated in its audited financial statements or the Statement of Assets and Liabilities, as the case may be.

- 5.2.2. The Bid must be accompanied by a valuation report issued by an approved valuer certifying the market value of assets which have been included in the Statement of Assets and Liabilities, the annual audited annual accounts along with the audit reports, by the statutory auditor/ independent chartered accountant (as the case may be) as specified in Clause 7.3.1 (h) and the annual reports (if applicable) of the Bidder (of each Member in case of a Consortium) for the last 3 (three) accounting years, preceding the year in which the Bid is made i.e., 2019-20, 2018-19, and 2017-18.

### **5.3. O&M Experience:**

#### **5.3.1. Eligibility Criteria**

The Bidder, in order to be eligible, must satisfy the following O&M experience eligibility criteria:

- i. Multinational chains or a standalone operator operating at least a 3-star category hotel as per Ministry of Tourism guidelines or "A" Category Hotel as per Goa, Daman & Diu tourism Act, having total 5 (five) years of experience.

In case the Bidder operates a 3-star, or "A" category or above category hotel, the Bidder shall also submit a copy of the star categorization certificate issued by Ministry of Tourism or Goa/Daman/ Diu Tourism Department

### 5.3.2. Site visit and verification of information

Bidders are encouraged to submit their respective Bids after visiting the Property site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

### 5.3.3. Acknowledgement of the Bidders

It shall be deemed that by submitting an e-bid, the Bidder has:

- a. made a complete and careful examination of the Bidding Documents;
  - b. received all relevant information requested from DSCL;
  - c. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of DSCL relating to any of the matters referred to in Clause 5.3.2 above;
  - d. satisfied itself about all matters, things and information including matters referred to in Clause 5.3.2 herein above necessary and required for submitting an informed Bid, execution of the Property in accordance with the Bidding Documents and performance of all its obligations thereunder;
  - e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 5.3.2 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations etc. from DSCL, or a ground for termination of the Operation and Maintenance Agreement by the O&M Operator;
  - f. acknowledged that it does not have a conflict of interest; and
  - g. agreed to be bound by the undertakings provided by it under and in terms hereof
- 5.3.4. DSCL shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by DSCL.

## 5.4. Verification and disqualification

5.4.1. Notwithstanding anything contained in this RFP, DSCL reserves the right to accept or reject any Bid and to annul or modify the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereto. In the event that DSCL rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

### 5.4.2. Right to accept and reject any or all bids

Notwithstanding anything contained in this RFP, DSCL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP

or the Bidding Documents and the Bidder shall, when so required by DSCL, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by DSCL shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of DSCL thereunder.

5.4.3. DSCL reserves the right to reject any e-bid and appropriate the Bid Security if:

- a. at any time, a material misrepresentation is made or uncovered, or
- b. The Bidder does not provide, within the time prescribed by DSCL, the supplemental information sought by DSCL for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Lowest Bidder gets disqualified / rejected, then DSCL reserves the right to take any such measure as may be deemed fit in the sole discretion of DSCL.

- c. In case it is found during the evaluation or at any time before signing of the Operation and Maintenance Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the O&M Operator either by issue of the LOA or entering into of the Operation and Maintenance Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by DSCL to the Selected Bidder or the O&M Operator, as the case may be, without DSCL being liable in any manner whatsoever to the Selected Bidder or O&M Operator. In such an event, DSCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to DSCL under the Bidding Documents and/ or the Operation and Maintenance Agreement, or otherwise.

5.4.4. Clarifications

- a. Bidders requiring any clarification on the RFP Document may send their queries to The Chief Executive Officer, Diu Smart City Ltd, Diu Municipal council, Fort Road Diu- 362520. Telephone Number:+91 2875252126 Email- [diudscl@gmail.com](mailto:diudscl@gmail.com) latest by the relevant date and time mentioned in Clause 3.2, Schedule of Bidding Process. DSCL would endeavor to respond to the queries by the date mentioned in Clause 3.2, Schedule of Bidding Process. DSCL will forward its responses, at its sole discretion, to all the Bidders and would include a description of the enquiry and the response of DSCL without identifying the source of the enquiry.
- b. DSCL shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, DSCL reserves the right not to respond to any question or provide any

clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring DSCL to respond to any question or to provide any clarification.

- c. DSCL may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by DSCL shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on DSCL.
- d. To facilitate evaluation of Bidders, DSCL may, at its sole discretion, seek clarifications from any Bidder regarding its e-bid. Such clarification(s) shall be provided within the time specified by DSCL for this purpose. Any request for clarification(s) thereto shall be made through email.
- e. If a Bidder does not provide clarifications sought under Clause 5.4.4 (d) above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, DSCL may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of DSCL.

#### 5.4.5. Qualified Bidders

The bidder who meets all the eligibility conditions laid down in RFP Document is a Qualified Bidder. The Price Bids of only Qualified Bidders will be opened.

#### 5.4.6. Amendment of RFP

- a. At any time prior to the Bid Due Date, DSCL may, for any reason, whatsoever whether on its own initiative / volition or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda or Corrigenda.
- b. Any Addenda or Corrigenda thus issued will be notified and uploaded on website only which shall be binding upon all the bidders. Interested bidders are advised to visit the Portal website <https://ddtenders.gov.in> regularly till the bid due date to check for any corrigenda / addenda/ amendment.
- c. In order to afford the Bidders a reasonable time for taking into account the contents of any Addenda or Corrigenda, or for any other reason, DSCL may, at its own discretion, extend the Bid Due Date by an appropriate period.

## **6. Preparation and submission of Bids**

### **6.1. Language**

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidders with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### **6.2. Preparation of Bid**

The Bidder shall provide all the information sought under this RFP. DSCL will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.

### **6.3. Bid submission**

6.3.1. Please refer to the Instructions/ Guidelines for E-Tendering Portal for Online Bid Submission. The Bidders are required to submit their e-bids electronically on <https://ddtenders.gov.in> website, using valid DSCs.

6.3.2. The Bidders are required to submit their bids electronically in the following 2 (two) parts:

- a. Technical Bid
- b. Financial Bid

6.3.3. Technical Bid shall contain duly filled application in the prescribed format along with the Appendices (together with the supporting documents specified therein) and the documents specified in Clauses 6.3.4 and 6.4.1 which shall also be submitted in hard-copy in the manner stated in Clause 6.13. Financial Bid shall be uploaded online only in the prescribed format.

6.3.4. Documents requiring submission in original hard copy in technical bid:

1. Original demand drafts towards payment of RFP Processing Fees of Rs. 10,000/-
2. Hard copy of all Documents listed at clause 6.4.1.



#### 6.4. Instructions for submission of Bid

6.4.1. Technical Bid: The following documents shall constitute the Technical Bid and are required to be uploaded on website: <https://ddtenders.gov.in> with scan copy of the demand draft for RFP processing fee:

#### Appendices

PART A: FORMAT FOR SUBMISSION OF BID		
1	Appendix- A1	Letter comprising the bid for Pre- Qualification and Technical Evaluation.
2	Appendix -A2	Power of Attorney for signing the Bid
3	Appendix-A3	Power of Attorney for Lead member of the Consortium (if applicable)
4	Appendix-A4	Joint Bidding Agreement (in case of a Consortium)
5	Appendix-A5	Bank Guarantee for Performance Security/Bid Security
6	Appendix - A6	Statement of Legal Capacity
7	Appendix - A7	affidavit certifying that the operator or any member of the consortium, or its directors are not blacklisted
PART B: FORMAT FOR TECHNICAL BID SUBMISSION		
8	Appendix B1	Particulars of the Bidder
9	Appendix B2	Financial Capacity of the Bidder
	Part 1 of Appendix B2	Statement of Assets and Liabilities along with the valuer's certificate
10	Appendix B3	Particulars of O&M Experience along with a copy of star categorization certificate issued by Ministry of Tourism or "A" category hotel certificate issued by Goa, Daman and Diu tourism department.
11	Appendix B4	Self-Certification Affidavit
ADDITIONAL DOCUMENTS		
12	<b>RFP Processing Fee:</b> Document evidencing payment of INR 10,000 (Indian Rupees Ten Thousand only) in favor of the DSCL payable at Diu towards RFP Processing Fee.	
13	<b>Bid Security:</b> Document evidencing payment of INR 10,00,000 (Indian Rupee Ten Lakh only) in favor of Chief Executive Officer, DSCL, Diu.	
14	Letter in terms of Clause 5.1.9 of this RFP Document.	
15	Letter(s) in terms of Clause 5.1.4 of this RFP Document.	
16	Copies of Bidder's duly audited annual accounts along with annual reports for the preceding 3 (three) years.	
17	Copy of Memorandum and Articles of Association of the Bidder and in case of a Consortium, of all the Consortium members (if applicable).	
18	PAN No, GST Registration certificate	
19	Any other document required to be submitted in terms of this RFP.	

6.4.2. Financial Bid: The following shall be uploaded as a part of the financial bid on the website: <https://ddtenders.gov.in>

The Financial Bid form should be duly filled in the MS Excel format, signed and uploaded (in pdf) as per the form set out in Appendix-C1.

The unconditional Financial Bid in respect of the Property for operation and maintenance of the Property by the Successful Bidder, in the format attached in Appendix C1, hereof.

## **6.5. Common instructions**

6.5.1. Bids submitted by post, fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

## **6.6. Bid Due Date**

6.6.1. Bids should be uploaded before 1600 hours IST on the Bid Due Date i.e. 05-08-2020 e-portal and hard copies of the documents listed in Clause 6.3.4 shall be submitted at the address provided in the said Clause 6.13 in the manner and form as detailed in this RFP.

6.6.2. DSCL may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 5.4.6 uniformly for all Bidders.

## **6.7. Late Bids**

6.7.1. Bids received by DSCL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **6.8. Modifications/Substitution/Withdrawal of Bids**

6.8.1. The Bidder may modify, substitute or withdraw its Bid prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

6.8.2. No change in the Consortium members is allowed once the Bids have been submitted.

## **6.9. Rejection of Bids**

6.9.1. Notwithstanding anything contained in this RFP, DSCL reserves the right to reject any Bid and to annul or modify the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor.

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

## 6.10. Validity of bids

6.10.1. The bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and DSCL.

## 6.11. Confidentiality

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

6.11.2. The Bidder also acknowledges that all material information which has or will come into its possession or knowledge in connection with this agreement or the performance hereof, consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging or cause loss to DSCL.

## 6.12. Correspondence with the Bidder

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

## 6.13. Sealing and marking of Bids

6.13.1. Documents from clause 6.4.1 Part A and Additional document, shall be placed in a separate envelope and marked as "Enclosures of the Bid".

6.13.2. Documents from clause 6.4.1 Part B shall be placed in a separate envelope and marked as "Technical Qualification"

6.13.3. The Two envelopes specified in clause 6.13.1 and 6.13.2 shall be sealed and placed in an outer envelope, which shall be sealed. Outer envelope shall clearly bear the following identification:

**"Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract" and**

**"Do not open the envelope without presence of authorized person".**

And clearly indicate the name and address of the bidder. In addition, the Bid due date be indicated on the right hand top corner of each of the envelopes.

The Bid shall be summarily rejected if the Hard copy of all or any of the documents mentioned herein is not received by DSCL latest within Seven days from the date of online submission.

Physical copies shall be send on below Address:

Manager Construction

Diu Smart City Ltd

Diu Municipal Council,

Fort Road, Diu,

Daman & Diu 362520

## 7. Bid Security

### 7.1. Bid Security

- 7.1.1. The Bidder shall furnish as part of its Bid, a Bid Security in the form of demand draft issued by a Scheduled Commercial bank in India for Rs. 10.00 Lakh (Rupees Ten Lakh only), in favor of the Diu Smart city Ltd (DSCL).
- 7.1.2. Any e-bid without the documents evidencing the payment of RFP Processing Fees and Bid Security shall be summarily rejected by DSCL as non-responsive.
- 7.1.3. The Bid Security of unsuccessful Bidders will be returned by DSCL, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by DSCL. The refund thereof shall be in the form of an account payee cheque in the case the payment has been made by a Demand Draft in favor of the unsuccessful Bidder(s).
- 7.1.4. The Selected Bidder's Bid Security will be returned, without any interest, upon signing the Operation and Maintenance Agreement and furnishing the Performance Security in accordance with the provisions thereof. DSCL may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by it in accordance with the provisions of the Agreement.
- 7.1.5. DSCL shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 7.1.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that DSCL will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 7.1.6. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to DSCL under the Bidding Documents and/ or under the Operation and Maintenance Agreement, or otherwise, if
  - a. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 9 of this RFP;
  - b. a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and DSCL;
  - c. the Selected Bidder fails within the specified time limit –
    - i. to sign and return the duplicate copy of LOA; or
    - ii. to sign the Operation and Maintenance Agreement; or
    - iii. to furnish the Performance Security in accordance with the Bid Documents.

## 7.2. Opening and Evaluation of Bids

- 7.2.1. DSCL shall open the Bids electronically as per Clause 3.2 of this RFP, on the website <https://ddtenders.gov.in>.
- 7.2.2. Bids for which a notice of withdrawal has been submitted in accordance with Clause 6.8 shall not be opened.
- 7.2.3. DSCL will subsequently examine and evaluate e-bids in accordance with the provisions set out in RFP.
- 7.2.4. Bidders are advised that qualification of e-bids will be entirely at the discretion of DSCL. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 7.2.5. Any information contained in the Bid shall not in any way be construed as binding on DSCL, its agents, successors or assigns, but shall be binding against the Bidder if the Property is subsequently awarded to it on the basis of such information.
- 7.2.6. DSCL reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 7.2.7. To facilitate the evaluation of Bids, DSCL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

## 7.3. Test of responsiveness

- 7.3.1. Prior to evaluation of Bids, DSCL shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
  - a) it is uploaded as per formats prescribed in Appendices Part-A, Part-B, and Part-C;
  - b) it is uploaded by the Bid Due Date including any extension thereof pursuant to Clause 6.6.2;
  - c) it is signed, sealed, and marked as stipulated in Clauses 6.2 and Clause 6.3;
  - d) it is accompanied by documents evidencing payment of the RFP Processing Fee, Bid Security and documents required in hard copy in sealed cover in accordance with this RFP Document;
  - e) it is accompanied by the Power(s) of Attorney(s) in terms of Clause 6.3.4;
  - f) it contains all the information and documents (complete in all respects) as requested in this RFP;
  - g) it contains information in formats same as those specified in this RFP/Bidding documents;
  - h) it contains certificates from Statutory Auditors (in case of companies)/ independent chartered accountant (in case of bidders other than companies doing business and maintain a balance sheet)/ valuer's certificate (in case of individual bidders not doing any business and not maintaining a balance sheet) in the formats specified in Part B of Appendices of the RFP for the Property;

- i) it is accompanied by the Joint Bidding Agreement (for Consortium), as stipulated in Clauses 5.1.3;
- j) it does not contain any condition or qualification; and
- k) it is not in violation of terms hereof.

## **7.4. Qualification and Bidding**

### **7.4.1. Short-Listing and Notification**

DSCL would announce a list of pre-qualified Bidders after the PQ criteria evaluation. Only the Bidders who qualify under the PQ criteria would be eligible for financial evaluation. DSCL will not entertain any query or clarification from the Bidder who could not be shortlisted.

### **7.4.2. Opening of Financial Bids**

Financial bids of only those Bidders who are qualified shall be opened by DSCL

### **7.4.3. Proprietary data**

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

### **7.4.4. Correspondence with the Bidder**

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

## 8. Criteria for Evaluation

### 8.1. Evaluation criteria for Technical Bids

S. No.	Criteria	Range	Marks
1	Operation and Maintenance Experience of a hotel of 3 (three) star or above category having a minimum of 40 (forty) rooms (in a single facility) <b>In India</b>	40 – 75 rooms	15
		> 75 – 100 rooms	17.5
		> 100 rooms	20
2	Minimum Average Annual Turnover from hotel operations	Rs. 4 cr. – Rs. 10.0 cr.	15
		> Rs. 10.0 cr – Rs. 20 cr.	17.5
		> Rs. 20	20
3	Net Worth of Company	Rs. 2.0 cr. – Rs. 5.0 cr.	15
		> Rs. 5.0 cr – Rs. 10.0 cr.	17.5
		> Rs. 10.0	20
4	Marks for Technical Proposal and Presentation 1. Understanding the strength and weaknesses of the property 2. Estimated Cost of Development of a Room in line with Brand Proposed. 3. Marketing Plan for the Project 4. Overall Planning pertaining to repairing and upgrading the properties as per desired standards 5. Operation & Maintenance Plan 6. Broad Environmental Management Plan 7. Credentials of team 8. Any other relevant details		40

Marks will awarded under each head and will be totaled out of 100. For technical qualification Minimum 70 marks required, only technically qualified bidders will be eligible for opening & evaluation of their Financial Bids.



## 8.2. Evaluation criteria for Financial Bids

The Bidder Quoting the highest percentage of Gross Revenue (to be shared with the Authority) shall be declared the successful bidder subject to meeting all other conditions mentioned in the RFP.

Note: Quoted revenue share should not less than 10% of gross revenue per year

In the event that two or more Bidders quote the same Revenue Share, Diu Smart city may:

a. Award the contract to the successful bidder whose technical score is higher.

OR

b. Take any other such measure as may be deemed fit by the department in its sole discretion, including annulment of the Bidding process.

## 8.3. Selection of Bidder and Award of Contract

8.3.1. The Shortlisted Bidder who quotes the highest percentage of Gross Revenue as a Revenue shall ordinarily be declared as the selected Bidder (“**Selected Bidder**”). In the event that the DSCL rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

8.3.2. In the event that the Selected Bidder withdraws or is not selected for any reason in the first instance, the DSCL may invite fresh bids.

8.3.3. After selection, a Letter of Award (“**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 14 days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

8.3.4. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Operator to execute the Agreement within the period prescribed in Clause 1.3 or the date mutually agreed between the two parties. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement. The Agreement shall only be executed and signed by an authorized signatory of the Selected Bidder / Operator, preferably one of the Board of Directors of the Operator.

## 9. Fraud and corrupt Practices

9.1 The Bidders and their respective officers, employees, agents and advisors shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Operation and Maintenance Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Operation and Maintenance Agreement, DSCL may reject a Bid, withdraw the LOA, or DSCL may terminate the Operation and Maintenance Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or O&M Operator, as the case may be, if it determines that the Bidder or O&M Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, unfair practice or restrictive practice in the Bidding Process. In such an event, DSCL shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to DSCL under the Bidding Documents and/ or the Operation and Maintenance Agreement, or otherwise.

9.2 Without prejudice to the rights of DSCL under Clause 9 hereinabove and the rights and remedies which DSCL may have under the LOA or the Operation and Maintenance Agreement, or otherwise if a Bidder or O&M Operator, as the case may be, is found by DSCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, unfair practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Operation and Maintenance Agreement, such Bidder or O&M Operator shall not be eligible to participate in any tender or RFP issued by DSCL during a period of 1(one) year from the date such Bidder or O&M Operator, as the case may be, is found by DSCL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

9.3 For the purposes of this Clause 9, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of DSCL who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Operation and Maintenance Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 3 (three) year from the date such official resigns or retires from or otherwise ceases to be in the service of DSCL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 4.2.5 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Property or the LOA or

the Operation and Maintenance Agreement, who at any time has been or is a legal, financial or technical advisor of DSCL in relation to any matter concerning the Property;

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

## 10. Miscellaneous

- 10.1. Governing law and jurisdiction: The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State/UT in which Tourism Department, Diu, UT of Daman and Diu has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process. The jurisdiction of the courts shall be in Diu.
- 10.2. Dispute Resolution mechanism: Any difference or dispute arising out of or relating to this RFP will be referred to Secretary of tourism Department, Diu, UT of Daman and Diu for appointment of an Arbitrator. The Sole Arbitrator so appointed shall not have any direct or indirect of any past or present relationship or interest in any of the parties. The arbitration proceeding will be regulated in accordance with the provisions of the Arbitration and Conciliation Act 1996 (as amended from time to time).

The arbitral proceedings shall be held in Diu.

The laws of India shall govern this agreement. The courts in Diu shall have exclusive jurisdiction.
- 10.3. Authorized signatory: The selected Bidder shall indicate the authorized signatories who can discuss and correspond with DSCL, with regard to the obligations under the contract. The selected Bidder shall submit at the time of signing the contract a certified copy of the resolution of their board, authenticated by the company secretary/ director, authorizing an official or officials of the Bidder to discuss, sign agreements/contracts with DSCL, raise invoice and accept payments and also to correspond. The Bidder shall provide proof of signature identification for the above purposes as required by DSCL.
- 10.4. Patent rights: In the event of any claim asserted by a third party of infringement of copyright, patent, trademark, industrial design rights, etc., arising from the use of the Hotel or any part thereof in India, the Selected Bidder shall act expeditiously to extinguish such claim. If the Selected Bidder fails to comply and DSCL is required to pay compensation to a third party resulting from such infringement, the Selected Bidder shall be responsible for the compensation to claimant including all expenses, court costs and lawyer fees. DSCL will give notice to the Selected Bidder of such claim, if it is made, without delay. The Selected Bidder shall indemnify DSCL against all third party claims.
- 10.5. Compliance with statutory and regulatory provisions: It shall be the sole responsibility of the Selected Bidder to comply with all statutory, regulatory & Law of Land and provisions while delivering the services mentioned in this RFP.
- 10.6. Conflict of interest: The Bidder shall disclose to DSCL in writing all actual and potential conflicts of interest that exist, arise or may arise (either for the Bidder or the Bidder's team) in the course of executing the Property as soon as practical after it becomes aware of that conflict.
- 10.7. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the Diu in which DSCL has its headquarters shall have exclusive

jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

- 10.8. DSCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b. consult with any Bidder in order to receive clarification or further information;
  - c. retain any information and/ or evidence submitted to DSCL by, on behalf of, and/ or in relation to any Bidder; and/ or
  - d. Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 10.9. It shall be deemed that by submitting the Bid, the Bidder agrees and releases DSCL, its employees, agents and advisors, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 10.10. Force Majeure

Force Majeure is herein defined as any case, which is beyond the control of the selected Bidder or DSCL as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of the contract, such as:-

- Natural phenomenon, including but not limited to floods, droughts, earthquakes and epidemics
- Acts of any government, including but not limited to war, declared or undeclared priorities, quarantines and embargos
- Terrorist attack, public unrest in work area

Provided either party shall within 10 (ten) days from occurrence of such a cause, notify the other in writing of such causes. The Bidder or DSCL shall not be liable for delay in performing his/her obligations resulting from any force Majeure cause as referred to and/or defined above. Any delay beyond 30 (thirty) days shall lead to termination of contract by parties and all obligations expressed quantitatively shall be calculated as on date of termination. Notwithstanding this, provisions related to indemnity, confidentiality survives termination of the contract.

## **PART A – FORMATS FOR BID SUBMISSION**

## APPENDIX–A1: Letter comprising the Bid for Pre-qualification and Technical Evaluation

To,  
Chief Executive Officer,  
Diu Smart City Ltd.,  
C/o Diu Municipal Council,  
Fort Road,  
Diu 362520

**Sub: “Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract”**

Dear Sir/Madam,

1. With reference to your RFP document dated ....., I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Property. The Bid is unconditional and unqualified.
2. I/ We acknowledge that DSCL will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the O&M Operator for the aforesaid Property, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as O&M Operator for the operation and maintenance of the aforesaid Property.
4. I/ We shall make available to DSCL any additional information it may find necessary or required to supplement or authenticate the Bid.
5. I/ We acknowledge the right of DSCL to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last 3 (three) years, we/ any of the Consortium Members<sup>1</sup> have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:

---

<sup>1</sup>If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

- a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by DSCL; and
  - b) I/ We do not have any conflict of interest in accordance with Clauses of the RFP document; and
  - c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 9 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with DSCL or any other public sector enterprise or any government, Central or State/UT; and
  - d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 9 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Property, without incurring any liability to the Bidders, in accordance with the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the positive Net Worth criteria and meet(s) the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, are not a Member of a/ any other Consortium submitting a Bid for the Property.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Property or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium have not been charge-sheeted by any agency of the Government or convicted by a court of law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, I/we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate DSCL of the same immediately.
15. I/We further certify that we/any Member of the Consortium are not barred by the Central Government/State/UT Government or any entity controlled by it, from participation in any property, and no bar subsists as on date of Bid.
16. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Financial Capacity was taken into consideration for the purposes of short-listing and qualification under and in accordance with the RFP, I/We shall inform DSCL forthwith along with



all relevant particulars and DSCL may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Operation and Maintenance Agreement but prior to Financial Close of the Property, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Operation and Maintenance Agreement shall be liable to be terminated without DSCL being liable to us in any manner whatsoever.

17. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate a Company (SPV, in case of a Consortium) as such prior to the execution of Operation and Maintenance Agreement.

18. I /We hereby confirm that we shall comply with the O&M requirements specified in requisite Clause of the RFP.

19. I/ We hereby irrevocably waive any right to remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by DSCL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Property and the terms and implementation thereof.

20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Operation and Maintenance Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. I/We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

21. I/ We have studied all the Bidding Documents carefully and also surveyed the site. I/We understand that except to the extent as expressly set forth in the Operation and Maintenance Agreement, I/we shall have no claim, right or title arising out of any documents or information provided to me/us by DSCL or in respect of any matter arising out of or relating to the Bidding Process including the award of Contract.

22. I/ We offer a Bid Security of Rs. 10,00,000 (Rupees Ten lakh only) to DSCL in accordance with the RFP Document.

23. The Bid Security in the form of a demand draft is attached (if applicable).

24. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Property is not awarded to me/us or I/our Bid is not opened or rejected.

25. Revenue Share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Operation and Maintenance Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the Property and Operation.

26. I/ We certify that in terms of the RFP, my/our positive Net Worth is Rs. ....  
(Rupees .....);

27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

28. I/We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the O&M Operator under the Operation and Maintenance Agreement till occurrence of financial close in accordance with the Operation and Maintenance Agreement.

29. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.

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

Yours faithfully,

Date: (Signature, name and designation of the Authorized signatory)

Place: Name and seal of Bidder/Lead Member

Date:

**APPENDIX–A2: Power of Attorney for signing of Bid2**

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

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

IN WITNESS WHEREOF I/WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Accepted

Notarized

(Signature, name, designation and address of the Attorney)

---

<sup>2</sup> To be submitted in original.

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholder's resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

**APPENDIX–A3: Power of Attorney for Lead Member of Consortium**

Whereas the ..... (“**DSCL**”) has invited Bids from interested parties for the ..... Hotel (the “**The Property**”).

Whereas, ..... and ..... (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Property in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Property, and

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

**NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

We, ..... having our registered office at ....., M/s. .... having our registered office at .....,M/s. ....having our registered office at ....., and ..... having our registered office at ....., (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S ..... having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the contract, during the execution of the Property and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the selection of the Consortium and submission of its bid for the Property, including but not limited to signing and submission of all Bids, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with DSCL, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Property and/ or upon award thereof till the Operation and Maintenance Agreement is entered into with Authority.

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20....

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

(Executants)

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

Witnesses:

1.

2.

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

## APPENDIX-A4: Joint Bidding Agreement

*(To be executed on Stamp paper of appropriate value)*

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

### AMONGST

1. {..... } having its registered office at ..... (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... } having its registered office at ..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {.....} having its registered office at ..... (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

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

### WHEREAS,

- (A) Diu Smart City Ltd represented by its Chief Executive Officer and having its principal office at \_\_\_\_\_ (hereinafter referred to as the “**DSCL**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids ( “**Bids**”) by its Request for Proposal No. .... dated ..... (the “**RFP**”) for

#### **“Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract”**

- (B) The Parties are interested in jointly bidding for the Property as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Property, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Property.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Property, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Property, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Operation and Maintenance Agreement with the Authority and for performing all its obligations as the O&M Operator in terms of the Operation and Maintenance Agreement for the Property.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the Consortium (Financial Member /Operation and Maintenance Member/ Other Member of the Consortium) and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the appointed date under the Operation and Maintenance Agreement when all the obligations of the SPV shall become effective;
- b) Party of the Second Part shall be (Operation and Maintenance Member/ Other Member of the Consortium);
- c) Party of the Third Part shall be (Operation and Maintenance Member/ Other Member of the Consortium);

**5. Joint and Several Liabilities**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Property and in accordance with the terms of the “RFP” and the Operation and Maintenance Agreement, till such time as the financial close for the Property is achieved under and in accordance with the Operation and Maintenance Agreement.

**6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the



Parties in the SPV shall be as follows:

First Party:

Second Party:

Third Party:

6.2 The Parties undertake that a minimum of:

- i. 51% (fifty one percent) of the total paid up share capital of the SPV for Lead member on a fully diluted basis; and
- ii. remaining paid up share capital of the SPV shall be held jointly by all other members of the Consortium on a fully diluted basis.

6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Operation and Maintenance Agreement.

## **7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and DSCL to enter into this Agreement;
- b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - i. require any consent or approval not already obtained;
  - ii. violate any applicable law presently in effect and having applicability to it;
  - iii. violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - iv. violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a

material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Property is achieved under and in accordance with the Operation and Maintenance Agreement, in case the Property is awarded to the Consortium. However, in case the Consortium does not get selected for award of the Property, the Agreement will stand terminated in case the Bidder is not selected or upon return of the Bid Security by DSCL to the Bidder, as the case may be.

**9. Miscellaneous**

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

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

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

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED  
DELIVERED

SIGNED, SEALED AND

For and on behalf of  
THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

**Notes:**

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

## APPENDIX–A5: Bank Guarantee for Performance Security

B.G. No. Dated:

1. In consideration of you,....., having its office at ....., (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” or the “Licencee” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Running of the property (hereinafter referred to as “Property” pursuant to the RFP Document .....dated ..... issued in respect of the property and other related documents including without limitation the draft Operation and Maintenance Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder/Licencee , do hereby in terms of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to Tourism Department, UT of Daman and Diu (hereinafter referred to as the “Authority”) an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder or Licencee shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by Authority stating that the Bidder or the Licencee is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents and shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or the Licencee or any other person and irrespective of whether the claim of Authority is disputed by the Bidder or the Licencee or not, merely on the first demand from Authority stating that the amount claimed is due to Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees ..... only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 5 (five) years from the LOA or for such extended period as may be mutually agreed between Authority

and the Bidder or the Licencee, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

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

10. It shall not be necessary for Authority to proceed against the said Bidder or Licencee before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... (Rupees ..... in Words only). The Bank shall be liable to pay the said amount or any part thereof only if Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before 5.00 pm Indian Standard Time on the Expiry Date.

Signed and Delivered by ..... Bank

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

(Signature of the Authorized Signatory)

(Official Seal)

**APPENDIX-A6: Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Lead Member of Consortium)*

Ref. Date:

To,

-----

Dear Sir,

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

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.<sup>3</sup>

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

---

<sup>3</sup> Please strike out whichever is not applicable.

**Appendix- A7: Format for affidavit certifying that the operator or any member of the consortium, or its directors are not blacklisted**

(On a Stamp Paper of relevant value)

**Affidavit**

I M/s. ...., (the names and addresses of the registered office) hereby certify and confirm that we or any of our promoter/s / director/s are not barred or blacklisted by any state government or central government / department / agency/PSU in India or abroad from participating in Property/ies, either individually or as member of a Consortium as on \_\_\_\_\_.

We further confirm that we are aware our Application for the captioned Property would be liable for rejection in case any material misrepresentation is made or discovered with regard to the requirements of this RFP at any stage of selection and/or thereafter during the Contract period.

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

Name of the Applicant

.....

Signature of the Authorized Person

.....

Name of the Authorized Person



**PART B – FORMATS FOR TECHNICAL BID SUBMISSION**

## APPENDIX-B1: Particulars of the Bidder

1. Detail of Bidder :
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
  
2. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
  
4. Particulars of the Authorized Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Joint Bidding Agreement should be attached to the Bid.
  - (c) Information regarding the role of each Member should be provided as per table below:

Sr. No	Name of Member	Role <sup>4</sup>	Percentage of equity in the Consortium <sup>5</sup>
--------	----------------	-------------------	---

<sup>4</sup> The role of each Member, as may be determined by the Bidder, should be indicated in accordance with the relevant Clause of RFP and instructions at Appendix-A4

<sup>5</sup> The percentage of equity should be in accordance with respective Clause of RFP

1			
2			
3			

6. The following information shall also be provided for the Bidder, including each Member of the Consortium:

**Name of Bidder/ member of Consortium**

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

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) disclosing material non-performance or contractual non-compliance in past , contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary)

## APPENDIX-B2: Financial Capacity of the Bidder

(In Rs. crore<sup>6</sup>)

Bidder type <sup>7</sup>	Net Cash Accruals			Net Worth <sup>8</sup>
	Year 1 (2)	Year 2 (3)	Year 3 (4)	
(1)				(5)
Single Entry Bidder				
Lead member of consortium				
Consortium (in proportion to their shareholding in the SPV)				

**Name & address of Bidder's Bankers:**

### Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the audit report (if any), balance sheets, financial statements and annual reports (where applicable) for 3 (three) years preceding the Bid Due Date. The financial statements shall
  - (a) reflect the financial situation of the Bidder or Consortium Members where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor in case of companies and independent chartered accountant in case of bidders other than companies;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
  
2. Net Cash Accruals shall mean Profit after Tax + Depreciation.
  
3. Net Worth shall mean:
  - (a) Paid-up share capital + reserves created out of profits and securities premium account) less (aggregate value of accumulated losses + deferred expenditure + miscellaneous expenditure not written off + reserves created out of revaluation of assets + write-back of depreciation and amalgamation), in case of companies.

<sup>6</sup> For conversion of other currencies into rupees, see notes below Appendix B2.

<sup>7</sup> A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

<sup>8</sup> The Bidder should provide details of its own Financial Capacity specified in RFP

- (b) The difference between the total assets and total liabilities, as per the audited financial statements of the bidders, being individuals undertaking any business and maintaining a balance sheet, partnership firms and LLPs.
- 4. Year 1 (i.e. 2019-20) will be the latest completed accounting year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
- 5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall also be submitted.
- 6. The Bidder shall provide a Statutory Auditor's Certificate (in case the bidder is a company)/ independent chartered accountant's certificate (in case of bidders other than companies) specifying the positive Net Worth of the Bidder and also specifying the methodology adopted for calculating such positive Net Worth in accordance with Clause 5.2.1 of the RFP document.

**APPENDIX B2**

**PART 1**

**Statement of assets and Liabilities**

Asset and Liability at the end of the Year										
A	Details of immovable asset									
S r. N o	Descri ption	Address								Am ount (IN R)
		Flat/Doo r/Block no	Name of Premises/Buil ding/village	Road/street/ Post/office	Area/L ocality	Tow n /Cit y /Dis trict	St ate	Cou ntry	Pi n Co de	
1										
2										
3										
4										

B	Description	Amount (INR)	
S.No	Description		
1	Jewelry, Bullion, etc.		
2	Archaeological collections, drawings, paintings, sculpture or any work of art		
3	Vehicles, yachts, boats and aircrafts		
4	Financial asset		
	a. Bank (including all deposits)		
	b. Shares & securities		
	c. Insurance policies		
	d. loans and advances given		
	e. Cash in hand		
<b>C</b>	<b>Liability in relation to Assets at (A+B)</b>		

Instructions:

1. Net worth shall mean:

2. The difference between the total assets and total liabilities, specified in the Statement of Assets and Liabilities, in case of bidders (being an individual not doing any business). The Bidder shall provide an independent chartered accountant's certificate specifying the positive

Net Worth of the Bidder and also specifying the methodology adopted for calculating such positive Net Worth and a valuation report issued by an approved valuer certifying the market value of assets which have been included in the Statement of Assets and Liabilities, in accordance with the RFP document.

**APPENDIX-B3: Particulars of the O&M Experience**

1. (a) Name:  
 (b) Country of incorporation:  
 (c) Address of the corporate headquarters and its branch office(s), if any, in India:  
 (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Property:
3. Particulars of individual(s) who will serve as the point of contact:  
 (a) Name:  
 (b) Designation:  
 (c) Company:  
 (d) Address:  
 (e) Telephone Number:  
 (f) E-Mail Address:
4. Details of the operational hotels for fulfilment of O&M Experience eligibility criteria:

Sl.No	Property Name	Location	Date of Commencement of Operation*	Other facilities like F&B, conference, facilities, etc.	No. of rooms	Year	Ownership of the Hotel	3 star/"A" category certificate (if any)

*\*Date of commencement of operation shall be the date of operation for owned hotels and shall be the date of O&M contract for hotels owned by others*

# Attach relevant certificates

- For all the hotels mentioned above including the hotels owned by the bidder and those owned by others– self certified copy of the latest licenses/ registrations/ certificates/ consents obtained in relation to the hotels as per the Applicable Laws.



- *For hotel owned by other – In addition to the licenses specified above, the bidder shall also attach a copy of the O&M Contract (First Page and other relevant pages indicating the number of rooms in the property and the tenure of O&M contract) and contact details of the hotel owner.*

**APPENDIX B4: Self-Certification Affidavit**

(On stamp paper of appropriate value)

I/ We hereby confirm that I/ we, the Bidder, satisfy the terms and conditions laid out in the RFP document and the technical and financial eligibility criteria set out in the RFP document.

I/ We hereby confirm that the hotels run and operated by me/ us are at all times operated as 3 star/"A" category hotels.

Thanking you,

Yours faithfully,

For and on behalf of.....

(Signature, name and designation of the authorized signatory)

**PART C – FORMAT FOR FINANCIAL BID SUBMISSION**

**APPENDIX–C1: Financial Bid Form**

(To be submitted and signed by the Bidder’s Authorized signatory)

To,  
Chief Executive Officer,  
Diu Smart City Ltd.,  
C/o Diu Municipal Council,  
Fort Road,  
Diu 362520

**Sub: “Selection of Agency for Operation & Maintenance of Hotel property Near Diu Fort in Diu, on Management Contract”**

Sir,

We hereby submit our Financial Proposal for the captioned Project. If the Project is awarded to us, we agree to make the following payments to The Authority as per the terms given in the Request for Proposal (RFP) Document.

Installment Payment to the Authority: Higher of

- i. Revenue Share: ..... % of Gross Revenue.
- ii. Minimum Guarantee Payment of INR 75 Lakh per annum which is payable in two installment. (Minimum Guarantee to be increased at a rate of 5% per year).

We are making this Financial Proposal after taking into consideration all the terms and conditions stated in the RFP Document and after careful assessment of the Project, all risks and contingencies and all other conditions that may affect the Financial Proposal.

We agree to keep our offer valid for 180 days from the due date of submission of this Proposal.

Sincerely,

Name of the Bidder .....

Signature of the Authorized Person .....

Name of the Authorized Person

## APPENDIX–D1– The Project Site, Project Facilities & Scope of Work

### 1.1. Project Site and Project Facilities

The Authority has developed Hotel Property known as Fort Circuit House is located facing the sea along the Fort Road near the Diu Fort which is the most visited place in Diu. The Circuit house provides exotic view of Diu fort - a 16th Century historical monument, and view of Panikotha Fortim Do Mar an island outpost built in the shape of a ship in the Arabian Sea. The property spread over 2900 Sqm comprises of:

#### Location Map



View of the hotel property:



## 1.2. Project Facilities

The property is designed as a hotel with G+2 floors and built-up area Approx 4562 sqm. The Hotel has 42 Rooms with the following configuration.

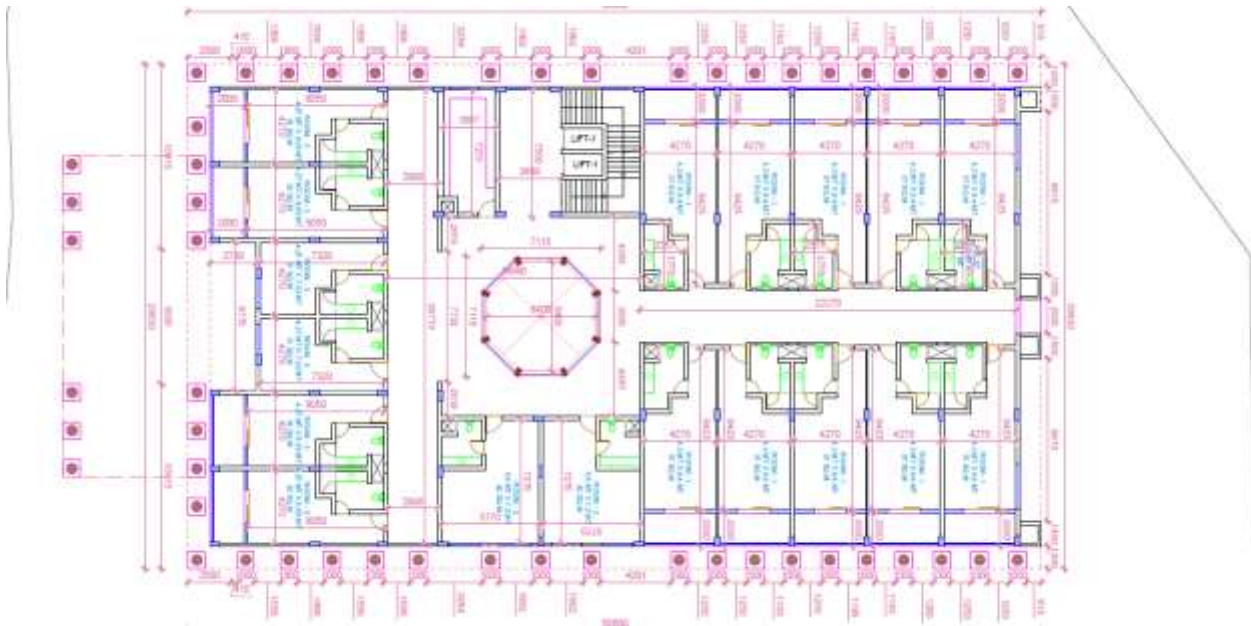
Room Type	No. of Rooms	Room Size
Executive Room	30	40.42 Sqm
Deluxe Room	4	41.76 Sqm
Standard Room	6	33.81 Sqm
Suit Rooms	2	68.62 Sqm
Restaurant		176.61 Sqm
Office Area		52 Sqm
Meeting Room		35 Sqm
Courtyard		
Store and Linen Room		23.04 Sqm
Recreation Room		63.51 Sqm
Reception and Lounge		300 Sqm

The site has dedicated parking spaces, for the hotel.

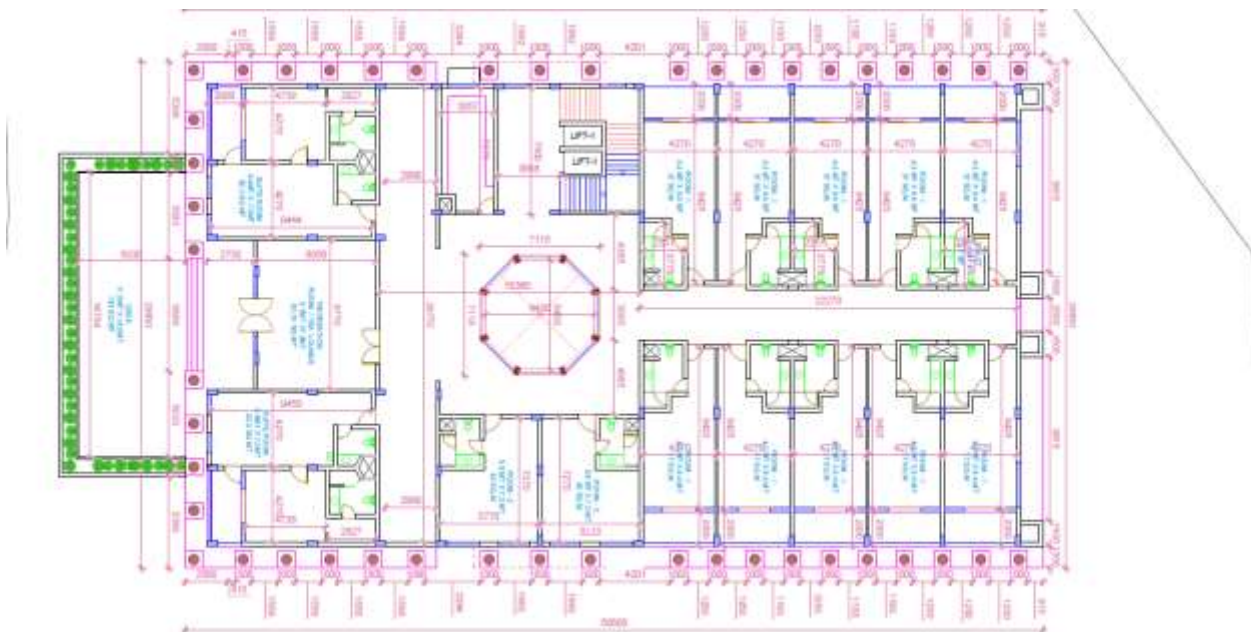




### First floor Layout of Fort Circuit House



### Second floor Plan of Fort Circuit House





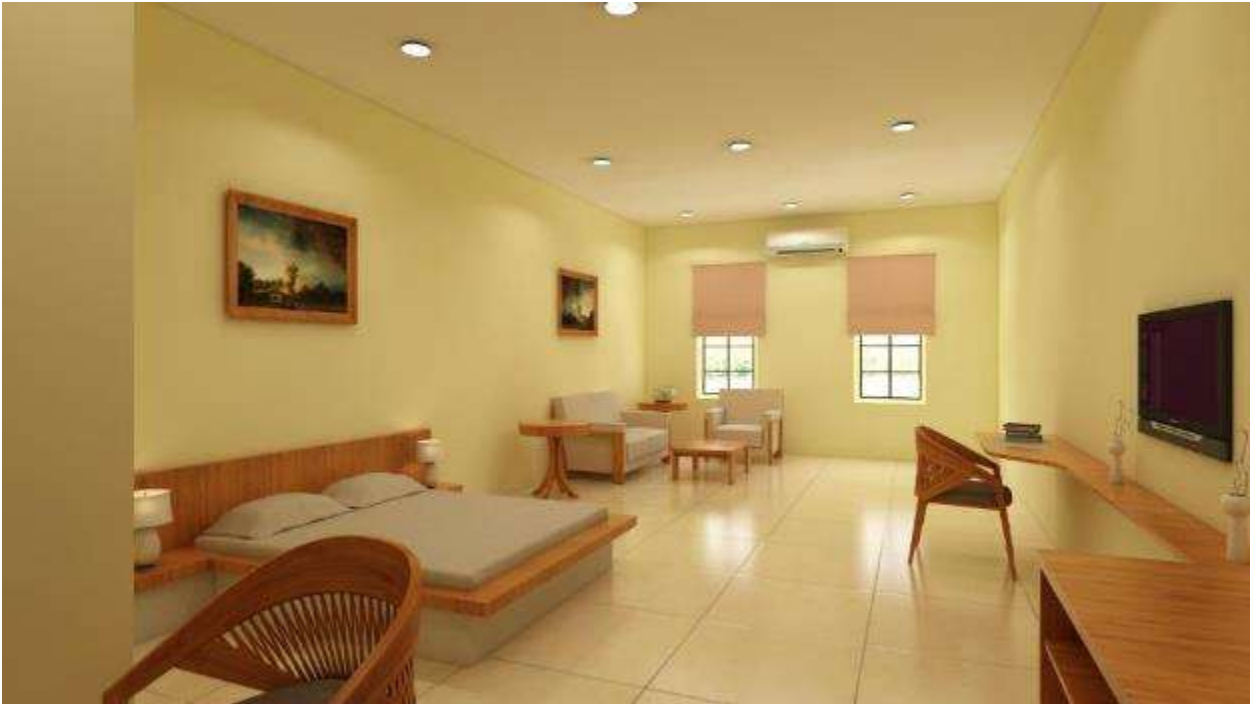
**Birds eye view of proposed Fort Circuit House**



**Lounge view at night of proposed Fort Circuit House**



**Standard Room view of proposed Fort Circuit House**



**Suite Bedroom Room view of proposed Fort Circuit House**





**Reception view of proposed Fort Circuit House**



**Central Courtyard View at Ground Floor of proposed Fort Circuit House**



### 1.3. Scope of work of the Operator

The scope of the Project (the "Scope of the Project") shall mean and include, during the Operation and Maintenance Period:

- A. The Operator shall procure and manage on its own, all movable items including crockery, bed linens, toiletries, utensils, cutlery, stationary etc. necessary for Hotel Operations. The procurement shall be completed before Commercial Operations Date (COD) i.e. within 3 (three) months from the Appointed Date. The Operator shall not have the right to modify the internal civil work and shall not harm / damage the civil structure of the Hotel property, nor shall it make any additions to the existing structure.
- B. To operate, maintain and manage the Project Facilities in accordance with good industry practices. Save and except in case of default by Authority as per operation and Maintenance Agreement Clause 25.2 and/ or Force Majeure as per Article 22 of the Agreement, the Operator shall keep at least 80% of rooms of the Hotel property operational and ready for use at all times during the period starting from Commercial Operations Date (COD) to the Expiry / Termination Date.
- C. The Operator shall have the exclusive right to market, manage bookings, fix charges / rates and retain revenues for operations of the Project Facilities.
- D. Recruit the managers and staff in the Hotel for its smooth functioning and to maintain the level of service as required for the property.
- E. To sub-license part of Project Facilities as necessary. All such sub-licenses shall be co-terminus with the Operation and Maintenance. The Operator shall obtain prior approval of the Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the Operator shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee.
- F. To promptly handover to the Authority, upon expiry or termination of the Operation and Maintenance, the Project Facilities, including all movable and immovable assets provided by the Authority at the start of the tenure, in good condition and at zero cost. It must be noted that this will not include any movable items brought in by the Operator during the Project tenure.
- G. The Operator must reserve 4 Room for UT Administration Diu, for UT Administration employee with discounted rate (as per employee eligibility). These rooms can book for public only with prior consent of Collector Diu.
- H. The Operator must reserve additional 10 room on 48 hrs notice as per request given by Tourism department Diu, for UT Administration employee on Current room Tariff.

***It is clarified herewith that in addition to the above-stated "Scope of the Project", the Operator shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Agreement, the Schedules to the Operation and Maintenance Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the execution of the Project.***

#### **1.4. Specifications of the Project Facilities Provided by the Authority**

- A. List of capital works to be provided by the Authority :
  - I. Civil Works for complete Hotel property, including:
    - a. Basic structural works including water-proofing
    - b. Façade work
    - c. Exterior finishes
  - II. Plumbing works within the Hotel property
  - III. Electrical works
  - IV. HVAC
  - V. Firefighting and suppression systems
  - VI. Finishing
    - a. Floor Finish
    - b. Wall Finish on plaster surface
    - c. False Ceiling
  - VII. Fixtures
    - a. Electrical
      - i. Connection from respective DB to Switch Board
      - ii. Room wiring
      - iii. Wiring, cable trays, raceways etc. in common areas of Hotel property
      - iv. Switches / switchboards / electrical devices in rooms
      - v. Decorative lighting
      - vi. All fittings and fixtures related to internal electrical works
    - b. HVAC – Branch line, duct lining, duct insulation, acoustics and diffuser
    - c. Fire Fighting – Sensors, diffusors, alarm system and other room fittings
    - d. Sanitary fixtures and fittings
  - VIII. Interior Fittings
    - a. Door and door fittings
    - b. All CP fittings
    - c. Other interior works
  - IX. Graphics and signages
  - X. Security network within the Project Site including CCTV camera, barricades, security guards etc.
  - XI. Furniture within common areas and guest rooms including beds, table, chairs etc.

## **Section 2**

Draft Operation & Maintenance Agreement for Hotel  
Property near Diu Fort, Diu

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## OPERATIONS AND MAINTENANCE AGREEMENT

**THIS AGREEMENT** is entered into on the \_\_\_\_\_ day of \_\_\_\_ 2020 at \_\_\_\_\_.

BETWEEN

Tourism Department, Diu, UT Administration of Daman and Diu represented by the..... and having its principal office at Diu, (hereinafter referred to as the “**Authority**” which expression shall, unless the context otherwise requires, include its administrators, successors and permitted assigns and substitutes) of **ONE PART**;

AND

**M/s** ....., (selected Bidder/ Consortium) incorporated under the provisions of the Company Act ..... represented by the ..... and having its registered office at ..... (hereinafter referred to as the “**Operator**” which expression shall, unless repugnant to the context or meaning thereof, include its administrations, successors and permitted assigns and substitutes) of the **SECOND PART**.

AND

Diu Smart City Limited having its office at Diu Municipal Council, Fort Road, Diu – 362520, U.T. of Daman and Diu, acting through its ‘Chief Executive Officer’ (hereinafter referred to as “**the Concessioneing Agency**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the THIRD PART

Each of the “Authority”, the “Selected Bidder” / “Operator” and the “Concessioneing Agency” shall hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS

The Authority intends to select a private-sector operator for operations and maintenance of the Hotel property, located near Diu Fort, Diu, for a period of 5 years (hereinafter referred to as the “**Project**”).

The Authority is in possession of the Project Facilities, as given in the Schedule – A, which shall be handed over to the Operator pursuant to this Agreement by the Authority

The Concessioneing Agency had accordingly, prescribed technical and commercial terms and conditions and invited proposals (the “**Request for Proposal**” or “**RFP**”) from the interested bidders for the above referred Project.

The selected bidder submitted its proposal / bid after having conducted its own complete due diligence of the site and all other matters and considerations with respect to the

Project. The Authority does not make any representation or warranty in respect of the economic or operational viability of the Project and the Operator has submitted its proposal / bid after making its own assessment as to viability of the project.

After evaluation of the bids received, the Authority had accepted the bid of the .....{selected bidder } and issued its Letter of Award No. ....dated..... (hereinafter called the "**LOA**") to the {selected bidder } requiring, *inter alia*, the execution of this Operation and Maintenance Agreement within 60 (Sixty) days of the date of issue thereof.

\_\_\_\_\_ [selected bidder/ Consortium] has promoted the Operator ("Special Purpose Vehicle" or "SPV") in accordance with the terms of the RFP and has requested the Authority through a letter bearing number \_\_\_ dated \_\_\_\_\_ to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the Letter of Award, including the obligation to enter into this Agreement pursuant to the Letter of Award for implementing the Project.

{By its letter dated ....., the Operator has also joined in the said request of the selected bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Operation and Maintenance Agreement pursuant to the LOA. The Operator has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof}.

The Selected Bidder has, in compliance with the terms of the LoA and as per the RFP, made the following payments on behalf of the Operator to the Authority:

An irrevocable, unconditional, bank guarantee, or FDR in the name of the Authority, issued by \_\_\_\_\_ [name \_\_\_\_\_ & \_\_\_\_\_ address of the issuing bank] for an amount equal to Rs. 75,00,000 /- (Rupees Seventy five Lakh only), as a guarantee for the performance of its obligation under this Operation and Maintenance Agreement by the Operator in relation to the Project (herein the 'Performance Security').

In response to the Selected Bidder / Operator complying with the terms of the LoA, the Authority has agreed to the said request of the {selected bidder} Operator, and has accordingly agreed to enter into this Agreement with the Operator for execution of the Project on Management Contract basis, subject to and on the terms and conditions set forth hereinafter.

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

# 1 ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

## 1.1 Definitions

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

**“Applicable Laws”** means all laws which are applicable to the Project and / or the Operator extending to the UT of Daman and Diu, having been enacted or brought into force by Government of India 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 Agreement.

**“Appointed Date”** means the date on which Conditions Precedent are satisfied or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be. The Appointed Date shall be deemed date of commencement of the Contract Period.

**“Associates”** means in relation to either Party and / or Joint Venture (JV) partners, a person who controls, is controlled by, or is under the common control with such Party or Joint Venture (JV) Member. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

**“Authority”** means Tourism Department, Diu, UT Administration of Daman and Diu.

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

**“Commercial Charges”** means the charges and all other sources of revenue or amounts of money by whatever name called that are payable by users / guests / visitors at any time and from time to time to the Operator / Authority, as specified in Article 18 of the Project.

**“Commercial Operations Date”** or **“COD”** shall mean the earlier of:

- a) Date for which the Operator takes the first booking for the property
- b) Date falling 90 days from the Appointed Date.



**“Contract”** or **“Operation and Maintenance Agreement”** means and includes this signed Agreement (including the Schedules of the Agreement , the “Letter of Award” issued by Diu Smart City Ltd ; the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexure/ appendix).

**“Contract Period”** is the period for which the rights are granted to operate and maintain the Hotel and exercise these rights as per the terms of this Agreement, commencing from the Appointed Date as mentioned in the RFP and the Operation and Maintenance Agreement hereof.

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

**“Competent Authority”** 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 Operator under or pursuant to this Agreement.

**“Operation and Maintenance Completion Certificate”** means the certificate as defined under Article 9.4.

**“Change in Law”** shall have the meaning as set forth in Article 29;

**“Change of Scope”** shall have the meaning set forth in Clause 11.1;

**“Cost”** means all expenditure properly incurred (or to be incurred) by the Operator, on the Project, including overheads and similar charges, but does not include profit.

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority to the Operator asking the latter to cure the breach or default specified in such notice;

**“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.

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

**“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.

**“Equity”** means the sum expressed in Indian Rupees representing the equity share capital of the Operator and shall include the funds advanced by any Joint Venture (JV) Member or by any of the shareholders of the Operator for meeting the equity component of the Project Cost.

**“Execution Date”** means the date of signing of this Operation and Maintenance Agreement.

**“Expert(s)”** shall mean a person with relevant expertise as detailed in Schedule D;

**“Finance”** means the funds required to operate, maintain and manage the Project and its components.

**“Financial Year”** means the year commencing from 1<sup>st</sup> April of any calendar year to the 31<sup>st</sup> March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Appointed Date to the 31<sup>st</sup> March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the Handover Date.

**“Financing Documents”** means the documents executed by the Operator in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.

**“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 22.1.

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Gross Revenue”** shall mean total gross revenue received by the Operator from the Project Facilities, as illustrated in Clause 18.3 (prior to the deduction or allowance of operational expenses (including fee of sub-license operator and/or salary), taxes, etc.);

**“UTDD”** means the UT Administration of Daman and Diu, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the UT Administration of Daman and Diu and its administrators, successors and assigns.

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

**“Operator”** means the selected operator which is an independent legal entity such as proprietorship firm(s), Registered Company (ies) or Registered Society (ies).

**“Party”** means any of the parties to this Operation and Maintenance Agreement.

**“Performance Security”** means a Bank Guarantee for an amount as defined in Article 9 of Operation and Maintenance Agreement; and shall be in the format as set out in Schedule-B, from a scheduled bank approved by the Authority.

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

**“Project”** means, subject to the provisions of this Operation and Maintenance Agreement operate and maintain the Hotel property located near Diu Fort, in Diu, on Management contract, as per the terms and conditions of the Operation and Maintenance Agreement and Schedules hereof and handover of the same and the Immovable Assets in good and operational condition, to the Authority at the end of the Contract Period or on prior termination of the Operation and Maintenance Agreement on Operator/ Authority Event of Default or otherwise. The movable assets, brought in by the Operator, can be taken away by the Operator after the end of the Contract Period.

**“Project Agreements”** means, collectively, this Operation and Maintenance Agreement, the Financing Documents, hire purchase agreements, in each case as amended, supplemented or otherwise modified from time to time.

**“Project Cost”** means the lower of the following:

- a) Total project cost as set forth in the Financing Documents;
- b) Actual capital cost incurred in initial investments in making the Project Facilities operational and ready-to-use, as certified by Statutory Auditors;

**“Project Facilities”** means, subject to the provisions of this Operation and Maintenance Agreement, the immovable assets, including the property & associate facilities, and associated movable assets provided by the Authority before Appointed Date.

**“Project Insurance”** means the insurance taken out by or on behalf of the Operator pursuant to the provisions of this Operation and Maintenance Agreement.

**“Project Implementation Period”** shall be a period no longer than 365 days from the Appointed Date, when the Operator shall make necessary investments in fit-outs, interiors etc. required to make the property operational and ready to use.

**“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"**.

**"Safety Consultant"** shall have the meaning set forth in Clause 13.1;

**“Schedules”** mean the Schedules to this Operation and Maintenance Agreement.

**“Senior Lender”** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Operator under any of the Financing Documents for meeting all or part of the project cost.

**“Service level benchmarks”** means the standards to which the operation and maintenance of the Project must adhere to and which the Operator undertakes to meet. Those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in operation of projects akin to the Project. It would include good engineering practices in operation and maintenance of the Project in accordance with this Operation and Maintenance Agreement, Applicable Laws, Clearances, reliability, safety, environment protection, economy and efficiency.

**“Statutory Auditors”** means an independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as the Independent statutory auditors of the Operator under the provisions of Companies Act, 1956 including any statutory modification or re- enactment or replacement thereof, for the time being in force.

**“Successful Bidder”** means Highest Revenue share Quote from the shortlisted bidder.

**“Tax”** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws. Here, for this Project, the Operator shall, at its own cost, pay all applicable existing and future taxes/ charges/ fees/ levies including the property tax, house tax, service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.

**“Tender / Bid / Proposal”** means the Operator's quoted Financial Proposal and detailed Proposal for the Project, including the Operator's Proposal, submitted to the Authority and as accepted by the Authority.

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

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

**“Termination Payment”** means the amount payable by the Authority to the Operator upon the termination of this Operation and Maintenance Agreement.

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

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

**“Variation”** means an improvement in the works, services, and facilities etc. to be carried out by the Operator, such that the cost of implementing the improvement can be recovered through a 30-day adjustment of the Contract Period.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- A. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- B. Reference to laws of Government of India, laws of Government of UT Administration of Daman and Diu or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in UT of Daman and Diu;
- 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;
- D. The Table of Contents, headings and sub-headings are for convenience and 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. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name;
- H. Words importing the singular shall include the plural and vice-versa where the Contract requires;
- I. References to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Diu are generally open for business;
- J. Any reference to day shall mean a reference to a calendar day;
- K. Any reference to month shall mean a reference to a calendar month as per Gregorian Calendar;
- L. References to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- M. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- N. Any reference at any time to any agreement, deed, instrument or document of any description shall be construed as reference to that agreement, deed, instrument or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- O. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- P. References to the "winding-up", "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 or relief of debtors;
- Q. Any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- R. 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 next business day.
- S. The damages payable by either Party to the other 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.
- T. Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Operator to the Authority and / or the Expert(s) shall be provided free

of cost and in three copies, and if the Authority and/or the Expert(s) is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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.

Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done in 2 (two) decimals places, with the third digit of 5 (five) or above rounded up and below 5 (five) below down except in Fee calculation which shall be rounded off to nearest Indian Rupee Hundred (100).

### 1.4 Priority of Agreements, clauses and schedules

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

- a) this Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- a) In the event of any inconsistency between the documents the following order of precedence shall prevail, Operation and Maintenance Agreement and the RFP and its subsequent corrigenda and clarifications.
- b) 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;
- c) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- d) between any two Schedules, the Schedule relevant to the issue shall prevail;
- e) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- f) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- g) between any value written in numerals and that in words, the latter shall prevail.

## 1.5 Priority of Documents

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

- A. This signed Operation and Maintenance Agreement (including its Schedules), along-with any Addendums issued to the RFP document dated \_\_\_\_\_;
- B. Instructions to Bidders (ITB) (Section 1 of the RFP document dated \_\_\_\_\_), enclosed/ attached with this signed Operation and Maintenance ; and
- C. All other documents enclosed / attached with this signed Operation and Maintenance Agreement.



## 2 ARTICLE 2: SCOPE OF THE PROJECT

Tourism Department, Diu has selected the Operator for operations and maintenance agreement of the Hotel property, located with near Diu Fort in Diu, on Management Contract basis ('the Project') for a period of 5 years.

### 2.1 Scope of the Project

The scope of the Project and engagement of the Operator as per the terms of this Agreement shall mean and include the following:

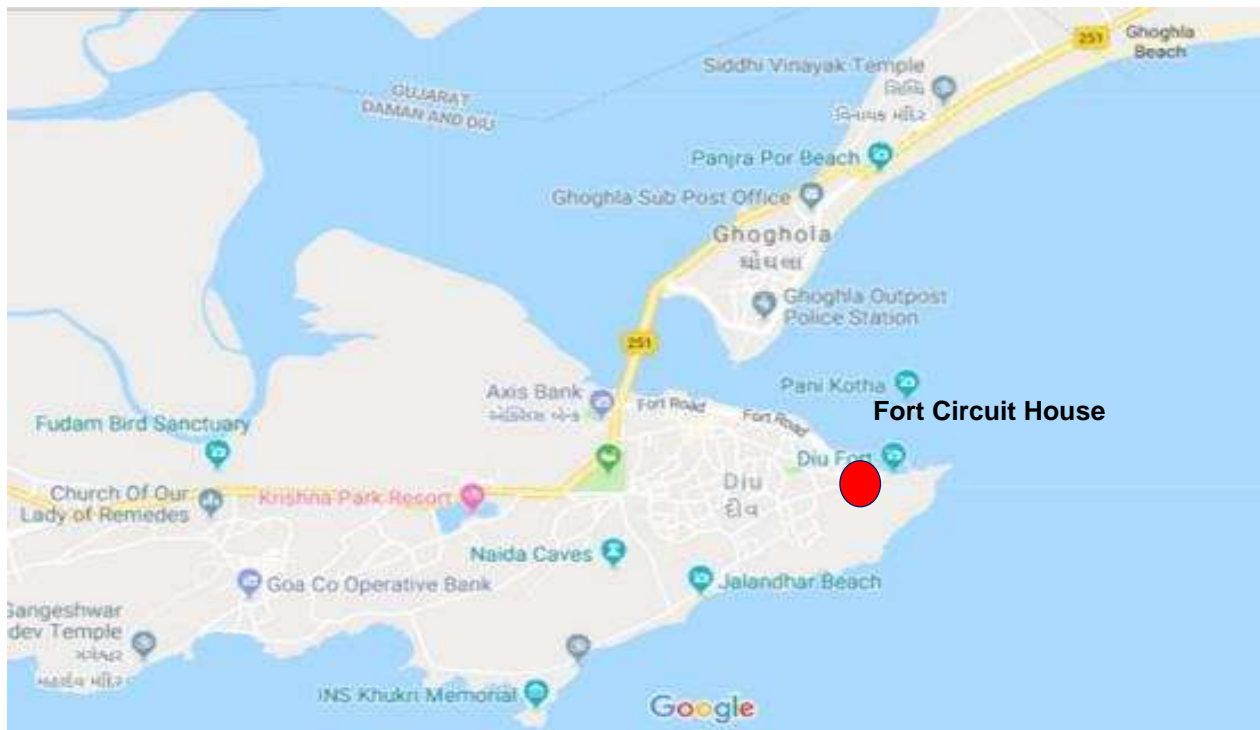
- A. Financing, operation and maintenance of the Hotel during the Term in accordance with the provisions of this Agreement.
- B. The Operator shall procure and manage on its own, all movable/ consumable items including crockery, bed linens, toiletries, utensils, cutlery, stationery etc. necessary for Property Operations as a Hotel. The procurement shall be completed before Commercial Operations Date (COD) i.e. within 90 Days from the Appointed Date. The Operator will not have the right to modify the civil work and shall not harm / damage the civil structure of the property, nor shall it make any additions to the existing structure.
- C. The Operator shall be responsible for complete operations, maintenance and management of the Project Facilities in accordance with good industry practices. Save and except in case of default by Authority as per Clause 25.2 and/ or Force Majeure as per Article 22, the Operator shall keep the property operational and ready for use at all times during the period starting from Commercial Operations Date (COD) to the Expiry / Termination Date.
- D. The Operator shall have the exclusive right to market, manage bookings, fix charges / rates and retain revenues for operations of the Project Facilities.
- E. Recruit the managers and staff in the Hotel for its smooth functioning and to maintain the level of service as required for the property.
- F. To sub-license part of Project Facilities as necessary. All such sub-licenses shall be co-terminus with the Operation and Maintenance. The Operator shall obtain prior approval of the Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the Operator shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee.
- G. To promptly handover to the Authority, upon expiry or termination of the Agreement period, the Project Facilities, including all movable and immovable assets provided by the Authority at the start of the tenure, in good condition and at zero cost. It must be noted that this will not include any movable items brought in by the Operator during the Project tenure.
- H. The Operator must reserve 4 Rooms for the UT Administration Diu, (with applicable discounted rate as per UT employee's eligibility). These rooms can be booked for public only with prior consent of Collector Diu.
- I. The Operator must reserve additional 10 rooms for allocation on 48 hrs notice as per request given by the Collector Diu / Tourism department Diu, for UT Administration employees on Current room Tariff basis
- J. Performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement

## 2.2 Details of Project

The Authority has a hotel property known as Fort Circuit House (“**The Property**”) located near Diu Fort in Diu. This property belongs to the Tourism Department, Diu, UT Administration of Daman & Diu, which has decided to hire a reputed hotel operator for operating and maintaining the aforesaid Property as a 3-star and above category hotel.

The details of this Project are as below:

- 1) Project Site:** The aforesaid Property is located facing the sea along the Fort Road near the Diu Fort which is the most visited place in Diu. The Circuit house provides exotic view of Diu fort - a 16th Century historical monument, and view of Panikotha Fortim Do Mar an island outpost built in the shape of a ship in the Arabian Sea. The plot has an area of 2900 SqM.





View of the hotel property:



## 2) Project Facilities:

The property is designed as a hotel with G+2 floors and built-up area Approx 4562 sqm. The Hotel has 42 Rooms with the following configuration.

<b>Room Type</b>	<b>No. of Rooms</b>	<b>Room Size</b>
Executive Room	30	40.42 Sqm
Deluxe Room	4	41.76 Sqm
Standard Room	6	33.81 Sqm
Suit Rooms	2	68.62 Sqm
Restaurant		176.61 Sqm
Office Area		52 Sqm
Meeting Room		35 Sqm
Courtyard		
Store and Linen Room		23.04 Sqm
Recreation Room		63.51 Sqm
Reception and Lounge		300 Sqm

The site has dedicated parking spaces, for the hotel.

### **3 ARTICLE 3: GRANT OF RIGHT**

#### **3.1 Operation and Maintenance Right**

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Operator and the Operator hereby accepts the grant of right for a period of 5 (Five) years, commencing from the Appointed Date, including the exclusive right, license, authority and authorization during the subsistence of this Agreement, including extension thereof, to operate, market, maintain and manage the Project property as a 3-star or above category hotel for the Contract Period. The Operator undertakes to operate and provide in the Hotel, all services normally provided in at least a 3 star hotel.

It is agreed that the grant of rights under this Agreement and engagement of the Operator by the Authority is in the nature of a service contract between two independent principals and neither party shall be considered as a partner, employee, principal or agent of the other. The Operator shall, in no manner, be deemed to be the agent or employee of the Authority/ UT Administration and shall, notwithstanding anything contained herein, have any rights, interest or entitlement to bind the Authority in any arrangement, agreement or obligation favouring a third party and shall not in any manner act on behalf of the Authority unless specifically approved in writing by the Authority.

Subject to and in accordance with the provisions of this Agreement, the rights hereby granted shall oblige or entitle (as the case may be) the Operator to:

- a) To finance, manage, operate and market the Project Facilities and regulate the use thereof by third parties during the term of the contract;
- b) demand, collect and appropriate commercial charges / room tariff/ user charges from guests and users liable for payment of commercial charge for using the Project Facilities;
- c) perform and fulfil all of the Operator's obligations under and in accordance with this Agreement;
- d) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and
- e) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Contract hereby granted or on the whole or any part of the Project nor transfer, license or part possession thereof, save and except as expressly permitted by this Agreement.
- f) the Operator has no right to sell or mortgage the title of the site, Hotel and/or Project

Assets or any of the whole or part thereof and it shall, on the Transfer Date, transfer and hand over the Site along with the Project Facilities and Project Assets to the Authority in accordance with the provisions hereof.

- g) Installation of suitable books of control and account to be kept in accordance with the applicable accounting policies and systems.
- h) Purchase of such inventories, provisions, supplies and equipment's as the Operator may deem reasonably necessary in order to maintain and operate the Hotel properly.
- i) The planning, preparation, contracting and execution of advertising and promotional programmes.
- j) Installing, operationalizing and thereafter maintaining and supporting latest hotel management software and systems (proprietary or otherwise) at the Hotel.
- k) comply with all applicable permits and Applicable Laws in the performance of the Operator's obligations under this Agreement including those being performed by any of the Subcontractors
- l) develop, implement and administer a safety program for the Project, the users thereof, and Subcontractors' personnel engaged in the provision of services under any agreement(s), including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Good Industry Practice
- m) Indemnify the Authority against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Operator in connection with the performance of its obligations under this Agreement
- n) undertaking routine maintenance including prompt repairs of cracks, drains, markings, lighting, signs and other control devices
- o) hand over the Project to the Authority upon Termination of the Agreement

### 3.2 Contract Period

The Contract Period for "**the Project**" shall commence from the Appointed Date and shall extend for a period of 5 (Five) years from such date (the "**Contract Period**") and during which the Operator is authorized to operate, maintain and market the Project Facilities in accordance with the provisions hereof.

It is hereby made clear that:

- a. In the event of the Contract Period being extended by Authority beyond the said period, in accordance with the provisions of this Operation and Maintenance Agreement , the Contract Period shall include the period / aggregate period by which the grant of right is so extended, and
- b. In the event of Termination, the Contract Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination.

At the end of the Contract Period or early termination of this Agreement for any reason whatsoever, all rights given under this Agreement shall cease to have effect and the Project Facilities, in good and operational condition, shall revert to the Authority without any obligation of Authority to pay or adjust any consideration or other payment to the Operator. For more details please refer Article 36 of this Agreement.

The Operator can request the Authority for renewal of the Contract Period by a maximum of 2 years; post the expiry of the original Contract Period. The Operator shall make a request in writing to the Authority, at least 6 (Six) months prior to the date of expiry of the Contract Period, for such renewal of the Contract Period. The Authority shall at its own discretion grant the renewal of the Contract Period and shall communicate the same to the Operator at least 3 months prior to the date of expiry of the Contract Period. In case the Authority accepts such request, the Contract Period and all future dates related to this Agreement shall be revised suitably. Further, the financial obligations for such extended period, pursuant to this Agreement, including but not limited to Installment Payment, shall be calculated as per Clause 26.2 of this Agreement. It is further clarified that, in case of any extension in the original Contract Period, the Operator shall continue to fulfill its obligations related to Performance Security as per Article 9 of this Agreement..

## **4 ARTICLE 4: CONDITIONS PRECEDENT**

Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 16, 22, 32 and 35, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4 (the "Conditions Precedent").

### **4.1 Conditions Precedent for Authority**

Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- A. Handed over the access and rights to the Project Facilities, free from encumbrances and along with constructed and ready-to-move-in Project Facilities and easement rights, to the Operator.
- B. Constituted a Management Committee (as per Article 15).

### **4.2 Conditions Precedent for Operator**

The Conditions Precedent required to be satisfied by the Operator prior to the Appointed Date shall be deemed to have been fulfilled when:

- A. Delivered to the Authority the confirmation, in original, of the correctness of their representation and warranties set forth in Sub-clauses (k), (l) and (m) of clause 7.1 of this Agreement;
- B. The Authority shall have received copies (certified as true copies by a director of the Operator) of all resolutions adopted by the board of directors of the Operator authorizing the execution, delivery and performance by the Operator of this Agreement.
- C. Performance Security amount in the required format shall have been submitted by the operator to the Authority.
- D. Achieved Financial Closure and delivered to the Authority, 3 (three) true copies of the Financing Agreements and the Financial Model, duly attested by a Director of the Operator, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Authority;

Provided that upon request in writing by the Operator, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.2.

### **4.3 Obligations to satisfy Condition Precedents**

Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction, in full, of its respective Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.



#### 4.4 Damages for delay

In the event that any Party does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1 and Clause 4.2 within the period specified in respect thereof, and the delay has not occurred as a result of breach of this Agreement by the other Party, or due to Force Majeure, the Party shall pay to the other Party Damages in an amount calculated at the rate of 0.02% (zero point zero two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 3.6% (three point six percent) of the Performance Security.

#### 4.5 Termination for delay by the Authority

If the Authority has not fulfilled any or all of the Conditions Precedent set forth in Clause 4.1 within the period specified in respect thereof, and the level of Damages due and payable by the Authority has reached the cap specified in Clause 4.4, the Operator may terminate this Agreement by serving a termination notice on the Authority within thirty (30) Business Days of the cap specified in Clause 4.4 being reached. This Agreement will terminate on the day falling ten (10) Business Days after the date the Authority receives the termination notice served by the Operator.

Upon termination of this Agreement pursuant to Clause 4.5:

- The Operator shall handover its rights and interest in the Project Assets to the Authority.
- The Performance Security, in its entirety, shall be returned to the Operator

#### 4.6 Termination for delay by the Operator

If the Operator has not fulfilled any or all of the Conditions Precedent set forth in Clause 4.2, within a period of 45 (forty-five) days from the Effective Date, and the level of Damages due and payable by the Operator has reached the cap specified in Clause 4.4, the Authority may terminate this Agreement by serving a termination notice on the Operator within thirty (30) Business Days of the cap specified in Clause 4.4 being reached. This Agreement will terminate on the day falling ten (10) Business Days after the date the Operator receives the termination notice served by the Authority.

Upon termination of this Agreement pursuant to Clause 4.6:

- The Operator shall handover all of its rights, title and interest in the Project Assets to the Contracting Authority.
- The Performance Security, in its entirety, shall be forfeited by the Authority.

#### 4.7 Commencement of Contract Period

The Parties agree that the Operator may, upon occurrence of the Appointed Date, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence execution of its scope under this Agreement.

## **5 ARTICLE 5: OBLIGATIONS OF THE OPERATOR**

### **5.1 General Obligations**

Subject to and on the terms and conditions of this Agreement, the Operator shall, at its own cost and expense, procure finance for and undertake operations, maintenance and marketing of the Project Facilities and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

Subject to the provisions of Clauses 5.1, the Operator shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

The Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- a. make, or cause to be made, necessary applications to the relevant Government agencies with such particulars and details as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- b. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- c. perform and fulfill its obligations under the Financing Agreements;
- d. make reasonable efforts to maintain harmony and good relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- e. not do or omit to do any act, deed or thing which may in any manner violates any of the provisions of this Contract;
- f. procure that the Project Facilities are operated and maintained in accordance with Good Industry Practice and Schedule-C;
- g. Recruit the managers and staff in the Hotel for its smooth functioning and to maintain the level of service as required for the property.
- h. The Operator must reserve additional 10 rooms on 48 hrs notice for UT Administration employees per their applicable eligible room Tariff. These rooms if vacant, can only be permitted for public booking, on obtaining consent from the Collector.
- i. Handover the Project Assets, to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

### **5.2 Obligations relating to Project Agreements**

It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Operator from its obligations or liability hereunder.

The Operator shall submit to the Authority the drafts of all Project Agreements, or any

amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed, no review and / or observation of the Authority and / or its failure to review and / or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

### 5.3 Obligations relating to Change in Ownership

The Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that:

- a. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty five per cent) of the total Equity of the Operator; or
- b. acquisition of any control directly or indirectly of the Board of Directors of the Operator by any person, either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Operator, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Operator without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3:

- a. the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition

of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Operator;

- b. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Operator; and
- c. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Operator, not less than half of the directors on the Board of Directors of the Operator or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Operator shall constitute acquisition of control directly or indirectly, of the Board of Directors of the Operator.

Subject to Clause 5.3, no Change in Ownership of the Operator, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in the Operator or any such person, shall be permitted without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

## 5.4 Employment of foreign nationals

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement.

## 5.5 Employment of trained personnel

The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

## 5.6 Sole purpose of the Operator

The Operator having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Operator or any of its

subsidiaries shall not, except with the previous written consent of the Government, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## **5.7 Branding of the Project**

The Parties agree that the Operator shall have the rights of branding of the property.

## **5.8 Facilities for differently-abled and elderly persons**

The Operator shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier-free environment for the physically or visually challenged and for elderly persons using the Project.

## **6 ARTICLE 6: OBLIGATIONS OF THE AUTHORITY**

### **6.1 General Obligations**

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

- a. Provide all necessary infrastructure facilities, Furniture and utilities, including water connection and electricity connection;
- b. support, cooperate with and facilitate the Operator in undertaking the Project in accordance with the provisions of this Agreement; and
- c. The Authority may facilitate without any obligation for obtaining all licenses from relevant authorities for the operation of the hotel.
- d. Appoint an independent auditor to audit the financial statements of the operator.

## 7 ARTICLE 7: REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and Warranties of the Operator

The Operator represents and warrants to the Authority that:

- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- b. It has full power and authority to execute, deliver and perform its obligations as per the rights granted 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 Project;
- e. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g. All the information furnished in the Operator's Bid / Proposal is, and shall be, true and correct as on the Proposal Acceptance Date & throughout the Contract Period / subsistence of the Agreement and the Balance Sheet and Profit and Loss Account of the Operator for each of the Financial Years after the Proposal Acceptance Date furnished to the Authority shall give true and fair view of the affairs of the Operator. If in case any false or misleading information, as furnished by the selected Operator in its Bid/Proposal, is found at a later stage after the signing of the Agreement, it shall entitle Authority to terminate the said signed Agreement between the Parties. The costs and risks for such termination shall be entirely borne by the Operator;
- h. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Operator's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i. There are no actions, suits, proceedings, or investigations pending or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- j. It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3;
- k. The Operator has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement;
- l. {the selected bidder} is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the

Operator pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- m. The Operator has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- n. The Selected Bidder is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Operator entering into this and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- o. All rights and interests of the Operator in the Project shall pass to and vest in the Authority on the Handover Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Operator or the Authority and that none of Assets including materials, supplies or equipment forming part thereof shall be acquired by the Operator subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement;
- p. No representation or warranty by the Operator contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- q. The Operator warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to any person by way of commission or otherwise for securing the or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Authority.

## 7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Operator that:

- a. The Authority has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. The Authority have taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- c. The Operator shall have complete, lawful and uninterrupted rights & access of the Project Facilities by way of License in accordance with this Agreement;
- d. All information provided by the Authority in the RFP document in connection with the Project is to the best of its knowledge and true and accurate in all material respects.

## 7.3 Disclosure

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



## **8 ARTICLE 8: Disclaimer**

### **8.1 Disclaimer**

The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Project Facilities, local conditions and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and / or completeness of any assessment, assumptions, statement or information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.

The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under any of them.

The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1 above shall not vitiate this Agreement, or render it voidable.

In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1 shall not prejudice the disclaimer of the Authority contained in Clause 8.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Agreement.

Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

## **9 ARTICLE 9: PERFORMANCE SECURITY**

### **9.1 Performance Security**

The Operator has, for the performance of its obligations hereunder during the Contract Period, provided to the Authority, prior to the date set for signing the Operations and Maintenance Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to INR 75 Lakh (Rupee Seventy five Lakh Only) in the form set forth in Schedule-B (the "Performance Security").

### **9.2 Appropriation of Performance Security**

Upon occurrence of an Operator Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 25. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Operator shall be entitled to an additional Cure Period of 120 (One hundred) days for remedying the Operator Default or to meet any Condition Precedent, and in the event of the Operator not curing its default or to meet any Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 25.

### **9.3 Release of Performance Security**

The Performance Security shall remain in force and effect for the Contract Period and shall cease to be in force and effect only when the operator shall have handover the project facility to the authority.

### **9.4 Operation and Maintenance Completion Certificate**

- a. At the end of the Contract period, the Operator shall handover the Project and Immovable Assets, in good and operational condition, to the Authority. Additionally, the Operator would not be allowed to remove any permanent fixtures put up during the contract period. However, all the movable assets brought in by Operator shall be the property of the Operator and shall be handed over to him after the end on the Contract Period.
- b. Within 90 (ninety) days of the end of the Contract Period, the Authority shall issue the "Operation and Maintenance Completion Certificate", which concludes the Operator's liability under this Agreement. This certificate shall be issued after the Operator submits to Authority a request for issue of such certificate. The form shall be as approved by Authority and shall include a detailed condition survey of the Project including the Assets.

- c. On the expiry of the Contract Period, the Operator shall prepare a detailed inventory of the Assets (including all movable and immovable assets, whether provided by the Authority or brought in by the Operator) present within the Project. The detailed inventory shall be submitted to the Authority and within 15 days of the expiry of the Contract Period.
- d. The Performance Security furnished by the Operator shall be released only after the issuance of the Operation and Maintenance Completion Certificate.

## **10 ARTICLE 10: PROJECT**

### **10.1 The Project Facilities**

The Project Facilities shall comprise the real estate described in Schedule-A which shall be provided and granted by the Authority to the Operator accordance with this Agreement (the "Project Facilities")

### **10.2 Permission to Access**

The Authority hereby grants to the Operator, access to the Project Facilities for carrying out any surveys and investigations that the Operator may deem necessary prior to Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Operator on or about the Project Facilities pursuant hereto in the event of Termination or otherwise.

In consideration of the Installment Payment, this Agreement and the covenants and warranties on the part of the Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from the Appointed Date, rights in respect of all the Project Facilities (along with any buildings, constructions or movable / immovable assets, if any, thereon) which is described, delineated and shown in Schedule-A hereto, free of any Encumbrances, to operate and maintain the said premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Contract Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the rights, upon the Termination of this Agreement for any reason whatsoever.

### **10.3 Procurement of the Project Facilities**

Pursuant to the notice specified in Clause 4.1, the Authority's Representative and the Operator shall, on a mutually agreed date and time, inspect the Project Facilities and prepare a memorandum containing an inventory of the Project Facilities including any other movable or immovable property on or attached to the Project Facilities. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Project Facilities to which access has not been granted to the Operator. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2, be deemed to constitute a valid right to the Operator for free and unrestricted use during the Contract Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid right with respect to the parts of the Project Facilities as set forth in the Appendix shall be deemed to have been granted to the Operator.

The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the signing of this Agreement, the Project Facilities to the Operator as included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Operator, it shall pay to the Operator Damages as per Clause 4.4.

#### **10.4 Protection of Project Facilities from encroachments**

During the Contract Period, the Operator shall protect the Project Facilities from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Operator to place or create any Encumbrance or security interest over all or any part of the Project Facilities or the Project Assets, or on any rights of the Operator therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

#### **10.5 Access to the Authority**

The right to the Project Facilities granted to the Operator hereunder shall always be subject to the right of access of the Authority and their employees for inspection, viewing and exercise of their rights and performance of their obligations under this agreement.

# 11 ARTICLE 11: CHANGE OF SCOPE

## 11.1 Change of Scope

Neither Party may propose a Change in Scope which would, if implemented:

- a. materially and adversely affect the health and safety of any person;
- b. infringe any law or Applicable Laws;
- c. be a departure from Good Industry Practice;
- d. cause any Required Permits or Applicable Permits to be revoked or be unobtainable;
- e. require a new Required Permit or Applicable Permit which will not be obtainable by the Operator using all reasonable endeavours;
- f. have a material and adverse effect on the performance of the O&M in a manner not compensated for pursuant to this Agreement; or
- g. result in a change to the essential nature of any of the Project Facilities.

## 11.2 Change Proposal

If either Party wishes to introduce a Change in Scope, it must serve a notice on the other Party providing details of such Change in Scope (a "Change Proposal").

## 11.3 Change Proposal Requirements

The Change Proposal must:

- a. set out the proposed Change in Scope in sufficient detail to enable the other Party to evaluate it in full;
- b. specify the reasons for the Change Proposal;
- c. specify all implications of the Change Proposal on this Agreement and any of its terms, and any of the other Project Agreements and any of their terms; and
- d. indicate, in particular, whether a change to the Financial Package is proposed.

## 11.4 Evaluation of Change Proposal

The Parties shall evaluate the Change Proposal taking into account all relevant issues, including without limitation, whether:

- a. the Change in Scope will affect the quality or successful delivery of the Scope of work and/or Services;
- b. the Change in Scope will interfere with the relationship of the Authority or the Operator with third parties;
- c. the financial strength of the Operator is sufficient to perform the Change in Scope;
- d. the Change in Scope materially affects the risks or costs to which the Authority is exposed; and
- e. the Change in Scope will require an amendment of this Agreement and / or any Project Agreement.

## 11.5 Acceptance or Rejection

As soon as practicable after receiving the Change Proposal, the Parties shall meet and discuss the matters referred to in it. During their discussions the Parties may propose modifications or accept or reject the Change Proposal.

## 11.6 Implementation

If the Parties agree the Change Proposal (with or without modification), the Project Company shall begin to implement the relevant changes arising from the Change in Scope within twenty (20) Business Days of the agreement (or such other period provided for in the Change Proposal). Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Agreement or any relevant Project Agreement, which are necessary to give effect to the Change in Scope.

## 11.7 Rejection

If the Authority rejects the Change Proposal, it shall not be obliged to give its reasons for such rejection.

## 11.8 Costs and Timelines

The costs and timelines of any Change in Scope will be allocated in accordance with the terms agreed in the Change Proposal.

## **12 ARTICLE 12: OPERATION AND MAINTENANCE**

### **12.1 O&M obligations of the Operator**

During the Contract Period, the Operator shall operate and maintain the Project Facilities in accordance with this Agreement by itself, repair or otherwise make improvements to the Project Facilities to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Operator shall include:

- a. The Operator shall be required to take care of the operational expenses arising out of the project and shall have the right to modify the internal civil work with prior approval of The Collector, Diu. However, the Operator shall not harm / damage the civil structure.
- b. The Operator shall be required to ensure that at least 80% of rooms at the Hotel property are operational and ready to use at all times during the period from COD till Expiry / Termination Date.
- c. The Operator shall have the right to sub-License a part of the Project for the Contract Period in accordance with the provisions of the Agreement.
- d. The Operator shall obtain prior approval of the Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the licensee shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee. The Authority reserves the sole right to not give consent / approval to such a request and no compensation or claim on this account shall be entertained.
- e. The Operator is expected to provide any movable equipment / item, as it may deem fit, in addition to that provided by the Authority at the time of handover of the Project Facilities as stipulated in Schedule A.
- f. The Operator shall remove promptly from the Project Facilities all surplus machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Facilities in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

The details of Scope of Work / Obligations of Operator during Contract Period have been given in Schedule – C.

### **12.2 Maintenance Requirements**

The Operator shall ensure that at all times during the Contract Period; the Project conforms to the maintenance requirements set forth in Schedule-C.

### **12.3 Maintenance Manual**

Not later than 90 (ninety) days from the Appointed Date, the Operator shall, in consultation with the Expert(s), evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project Facilities, in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice,



and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Expert(s). The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 12.3 shall apply, *mutatis mutandis*, to such revision.

Without prejudice to the provision of Clause 12.3, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

## 12.4 Maintenance Programme

No later than 45 (forty five) later than Appointed Date and / or days prior to the beginning of each Accounting Year during the Contract Period, as the case may be, the Operator shall provide to the Authority and the Expert(s), its proposed annual programme of preventive, urgent and other scheduled maintenance (the "Maintenance Programme") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- a. preventive maintenance schedule;
- b. arrangements and procedures for carrying out urgent repairs and regular wear & tear of the equipments installed by the Operator;
- c. criteria to be adopted for deciding maintenance needs;
- d. intervals and procedures for carrying out inspection of all elements of the Project;
- e. intervals at which the Operator shall carry out periodic maintenance;
- f. arrangements and procedures for carrying out safety related measures; and
- g. Intervals for major maintenance works and the scope thereof.

Within 15 (fifteen) days of receipt of the Maintenance Programme, the Expert(s) shall review the same and convey its comments to the Operator with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

The Operator may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 12.4 shall apply *mutatis mutandis* to such modifications.

## 12.5 Damages for breach of maintenance obligations

In the event that the Operator fails to repair or rectify any defect or deficiency set forth in the Maintenance Programme/Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages at 0.1% (zero point one per cent) up to a total of 5% (five percent) of the cost of such repair or rectification as estimated by the Expert, to be calculated and paid for each day of delay until the breach is cured. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement; including the right of Termination, when total recoveries of damages exceed 5% of the cost of such repair or rectification as estimated by the Expert.

The Damages assessed and specified forthwith by the Expert; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its obligations hereunder. The Operator shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## 12.6 Authority's right to take remedial measures

In the event the Operator does not maintain and/or repair the Project Facilities or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to Commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Expert(s), as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Operator, and to recover its cost from the Operator. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Operator to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 12.9 shall be without prejudice to its rights remedies provided under Clause 12.8.

The Authority shall have the right, and the Operator hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 12.9 directly from the Operator's Performance Security as if such costs and Damages were O&M Expenses, and for may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its obligations hereunder. The Operator shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## 12.7 Overriding powers of the Authority

If in the reasonable opinion of the Authority, the Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the users / guests, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Operator to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

In the event that the Operator, upon notice under Clause 12.10, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 12.10 and take over the performance of any or all the obligations of the Authority to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Operator in accordance with the provisions of Clause 12.9 along with the Damages specified therein.

In the event of a national emergency, civil commotion or any other act specified in Clause 22.3, the Authority may take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it, and exercise such control over the Project Facilities or give such directions to the Operator as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 22. It is also agreed that the Operator shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 12.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

## 12.8 Restoration of loss or damage to Project Facilities

Save and except as otherwise expressly provided in this Agreement, in the event that the Project Facilities or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever other than Indirect Political Event or Political Event, the Operator shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project Facilities conforms to the provisions of this Agreement.

## 12.9 Modifications to the Project Facilities

The Operator shall not carry out any material modifications to the Project Facilities save and except where such modifications are necessary for the Project Facilities to operate in conformity with the Specifications and Standards, Maintenance Requirements and Good Industry Practice and Applicable Laws; provided that the Operator shall notify the Expert(s) of the proposed modifications along with particulars thereof at least 30 (Thirty) days before commencing work on such modifications and shall reasonably consider any suggestions that the Expert(s) may make within 30 (Thirty) days of receiving the Operator's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

## 12.10 Excuse from performance of obligations

The Operator shall not be considered in breach of its obligations under this Agreement if any part of the Project Facilities is not available on account of any of the following for the duration thereof:

- a. an event of Force Majeure;
- b. measures taken to ensure the safe use of the Project Facilities except when unsafe conditions occurred because of failure of the Operator to perform its obligations under this Agreement;  
or
- c. compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project Facilities.

Notwithstanding the above, the Operator shall keep all unaffected parts of the Project Facilities open provided they can be operated safely.

## 12.11 Advertising on the Site

The Operator shall undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Facilities, only if the advertising thereon does not, in the opinion of the Authority, violate orders passed by any Competent Court of law. All advertising on the Project shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Operator hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

# 13 ARTICLE 13: SAFETY REQUIREMENTS

## 13.1 Safety Requirements

The Operator shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of facility users and other persons present at the Project Facilities. In particular, the Operator shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities, and shall comply with the safety requirements.

The Authority shall either appoint an experienced and qualified firm / organization or nominate an experienced Person of the Authority or the Expert(s) (as the case may be) to undertake the duties in this regard (the “Safety Consultant”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

## 13.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Operator to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

## **14 ARTICLE 14: MONITORING OF OPERATION AND MAINTENANCE**

### **14.1 Quarterly status reports**

During Contract Period, the Operator shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Expert(s) a quarterly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Expert(s). In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

### **14.2 Inspection**

The Expert(s) shall inspect the Project at least Quarterly. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Operator within 7 (seven) days of such inspection.

### **14.3 Tests**

For determining that the Project conforms to the Maintenance Requirements, the Expert shall require the Operator to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Operator shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Expert and furnish the results of such tests forthwith to the Expert. One half of the costs incurred on such tests, and to the extent certified by the Expert as reasonable, shall be reimbursed by the Authority to the Operator.

### **14.4 Remedial measures**

The Operator shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 14.3 and furnish a report in respect thereof to the Expert(s) and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Operator shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

The Expert(s) shall require the Operator to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 14.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Operator in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Operator.

## 14.5 Reports of unusual occurrence

The Operator shall, within 7 (seven) days of completion of each quarter, send to the Authority and the Expert(s), a report stating accidents and unusual occurrences on the Project Facilities relating to the safety and security of the Users and Project. For the purposes of this Clause 14.5, accidents and unusual occurrences on the Project shall include:

- a. death or injury to any person;
- b. damaged or dislodged fixed equipment;
- c. any obstruction on the Project Facilities which results in closure / slowdown of the services being provided by the Operator;
- d. disablement of any equipment during operation;
- e. smoke or fire;
- f. such other relevant information as may be required by the Authority or the Expert(s).

# 15 ARTICLE 15: MANAGEMENT COMMITTEE

## 15.1 Appointment

Within 21 (twenty one) days from the date of signing of the Agreement, the Authority shall constitute a Management Committee of five members. The Management Committee shall consist of:

- a. 3 (three) representatives of the Authority, and
- b. 2 (two) representatives of the Operator

A representative of the Authority shall be the chairman of the Management Committee. The Management Committee shall have powers and duties as mentioned in the section below.

## 15.2 Powers and Duties

The Management Committee shall have the powers and duties set out in this Agreement or any other powers required for the proper operation and maintenance of the Project, including & without limitation:

- a. The Management Committee would assist (wherever possible) the Operator to get all regulatory approvals and certificates for operations and maintenance.
- b. The Management Committee would approve any improvements or modifications proposed by any of the members of the Management Committee.
- c. The Management Committee shall ensure that from the Appointed Date till the completion of the Contract Period, the Operator has access to the Project Facilities for the purpose of carrying out the Operator's obligations under this Agreement.
- d. The Management Committee shall, at all reasonable times and upon reasonable notice, have access to the Project Facilities for the purpose of discharging its duties under this Agreement.
- e. The Management Committee shall undertake inspections, at such times as it deems appropriate, to determine the extent of compliance with provisions stipulated in this Agreement and notify the Authority and the Operator of any deviations there from within 7 (seven) days of such inspections.
- f. The Management Committee would review the Operators quarterly reports;
- g. The Management Committee would review Performance Security requirements;
- h. The Management Committee would impose penalties on the Operator.
- i. The Management Committee would monitor the Project accounts and pay-outs;
- j. The Management Committee would monitor when the Payment Installment from the Operator is due.
- k. The Management Committee reserves the right to decide and take actions in all cases of dispute between the Operator and the Authority.
- l. The Management Committee shall have the power to appoint expert(s) in any area required, for a review of the operation, maintenance and planning of the Project.
- m. The Operator and the Authority shall extend full co-operation to the Management Committee and to any expert(s) appointed by the Management Committee. All the expenses of the Management Committee shall be borne by the Authority.
- n. Management committee will approve any suggestion or modification given by expert (s).



- o. The Management Committee shall meet at least once every Month or at the request of either Party and at such time and venue as may be indicated by the Convener and notified to all the members of the Management Committee, well before the date of the meeting.
- p. Any expenditure, related to inspection, monitoring etc. arising out of the project in future, as approved by the Management Committee, during the Contract Period, would be payable by the Authority.
- q. The decision of the Management Committee shall be taken on the basis of the majority present and voting in any meeting, where such decision is taken.
- r. Any decision of the Management Committee within its powers and duties as provided in this Clause 15.2 of the Agreement, shall be binding upon the Operator.

# 16 ARTICLE 16: FINANCIAL CLOSE

## 16.1 Financial Close

The Operator hereby agrees and undertakes that it shall achieve the Financial Close within 45 (forty-five) days from the date of this Agreement and in the event of delay, it shall be entitled to a further additional period not exceeding 30 (thirty) days, subject to payment of damages to the Authority in a sum calculated as per Clause 4.4; provided that the damages specified herein shall be payable every week in advance and the period beyond the said 45 (forty-five) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1 or due to Force Majeure.

The Operator shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package (the “Financial Package”) and the Financial Model, duly attested by a Director or authorized representative of the Operator, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

## 16.2 Termination due to failure to achieve Financial Close

Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 22, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 16.1, all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Operator, and the Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Clause 16.2 shall not apply.

Upon termination under Clause 16.2, the termination payments shall be as defined in Clause 4.6.

## 17 ARTICLE 17: PAYMENTS TO THE AUTHORITY

### 17.1 Payment to the Authority

In consideration of the grant of Concession, the Operator shall pay to the Authority the following sums by way of Installments Payment (the "Installment Payment"). The Installment Payment, in any year, shall be equivalent to higher of

- i. **Revenue Share** as a %age (as quoted by Successful Bidder / Operator in Financial Proposal) of the Gross Revenue for the period.
- ii. **Minimum Guarantee Payment of that period** - INR 75 Lakh (Sixty five lakh), per annum, Payment shall be made in two installment, Minimum Guarantee payment will be increase at a rate of 5% per year.

The term "**Installment**" shall mean a period of 6-month at the end of which the Payment shall be due and payable to the Authority.

All Installment Payments to the Authority shall be made by the Operator within 15 days from the last day of any Installment Period i.e. on or before 15th April or 15th October of every year, whichever is applicable. It must be noted that

- the first Installment Payment to the Authority shall be made within 15 days from the end of the First Installment Period.
- the last Installment Payment to the Authority shall be made within 15 days from the Expiry Date or Termination Date of the Concession Agreement.

The Operator shall pay to the Authority the Installment Payment through Demand Draft/Pay order in favour of "Dy. Director (Tourism), Diu", payable at Diu.

# 18 ARTICLE 18: PROJECT REVENUE

## 18.1 Collection and appropriation of commercial charges

The Operator shall levy, collect, retain and appropriate (reasonable) commercial charges either on behalf of Authority or self, from the visitors / users / guests during the Contract Period, in accordance with the provisions of this Agreement (“**Project Revenues**”). The Authority expressly recognizes the right of the Operator or its Sub-contractors to levy, demand, collect, retain, and to appropriate Project Revenues in accordance (i) with the terms of this Agreement and (ii) to exercise all rights and remedies available under Law and under this Agreement for the recovery of Project Revenues.

## 18.2 Display of Commercial Charges Rates

The Operator shall prominently display the applicable rates of commercial charges for information of visitors / users / guests, wherever applicable.

## 18.3 Revenue Streams from the Project

The revenue streams for the Operator shall be as follows:

### 1) Income from the Hotel property

The Operator shall be permitted to charge for services provided at the Hotel property including room rentals, F&B charges etc.

### 2) Income from other Project Facilities

The Operator shall be permitted to charge users for other facilities like spa, gymnasium, banquet facility, conference room/ business centre, and other related facilities (If any).

### 3) Income from Branding and Advertisement

The Operator shall be permitted to have tie-ups with travel service providers, tourism portals, advertisement agencies etc to showcase their products/ brands at the hotel premises and thereby be able to charge any associated charges including advertisement charges etc., related to the Project Facilities.

## **19 ARTICLE 19: REVENUE COLLECTION**

### **19.1 Collection of Revenue**

The Operator shall levy, collect, retain and appropriate (reasonable) commercial charges either on behalf of Authority or self, from the visitors / users / guests during the Contract Period, in accordance with the provisions of this Agreement (“Project Revenues”).

The Operator shall be liable for the loss of any User Fee collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.

The Operator shall put in place, prior to the receipt of any of the User Fee, security measures necessary for handling, deposit and protection of User Fee from loss, theft or destruction. Notwithstanding such security measures. All money being held by the Operator shall at all times be insured against loss due to but no limited to theft, loss, fire and natural disasters.

## **20 ARTICLE 20: INSURANCE**

### **20.1 Insurance during Contract Period**

The Operator shall effect and maintain at its own cost, during the Contract Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Non Political Event (the "Insurance Cover"). The Operator shall procure that in each insurance policy, the Authority shall be a co-insured.

### **20.2 Insurance Cover**

Without prejudice to the provisions contained in Clause 20.1, the Operator shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following:

- a. Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Operator, at replacement value;
- b. Comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- c. The Operator's general liability arising out of the Contract;
- d. Liability to third parties for goods or property damage;
- e. Workmen's compensation insurance; and
- f. Any other insurance that may be necessary to protect the Operator and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

### **20.3 Insurance during Contract Period**

Not later than 45 (forty five) days prior to commencement of the Contract Period, the Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **20.4 Evidence of Insurance Cover**

All insurances obtained by the Operator in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Operator shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Operator to the Authority.

## 20.5 Remedy for failure to insure

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

## 20.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## 20.7 Operator's waiver

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

## 20.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator by credit to the Tourism Department Account and it shall, notwithstanding anything to the contrary contained in Clause 20.3, apply such proceeds for any necessary repair, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

## 20.9 Compliance with conditions of insurance policies

The Operator expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Operator's failure to comply with conditions imposed by the insurance policies effected in accordance with the Agreement.

## **21 ARTICLE 21: ACCOUNTS AND AUDIT**

### **21.1 Audited accounts**

The Operator shall maintain books of accounts recording all its receipts (including all Project Revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

### **21.2 Certification of claims by Statutory Auditors**

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

### **21.3 Set off**

In the event any amount is due and payable by the Authority to the Operator, it may set-off any sums payable to it by the Operator and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.



## 22 ARTICLE 22: FORCE MAJEURE

### 22.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 22.2, 22.3 and 22.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (**the "Affected Party"**) of its obligations under this Agreement and which act or event:

- a. is beyond the reasonable control of the Affected Party, and
- b. the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and
- c. has Material Adverse Effect on the Affected Party.

### 22.2 Non-Political Event

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

- a. Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent originating from a source external to the Project Facilities or not designed for in Implementation Works);
- b. strikes or boycotts (other than those involving the Operator or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Facilities for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 22.3;
- c. any judgement or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or (ii) on account of breach of any Applicable Law or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- d. any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Operator will ensure that it has insured itself against such risks.

### 22.3 Indirect Political Event

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

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- b. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- c. Any public agitation which prevents collection of Commercial Charges by the Operator for a period exceeding a continuous of 7 (seven) days in an Accounting Year.
- d. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- e. any Indirect Political Event that causes a Non-Political Event; or
- f. any event or circumstances of a nature analogous to any of the foregoing.

## 22.4 Political Event

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

- a. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 29 and its effect, in financial terms, exceeds the sum specified in Clause 29.1
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Operator;
- c. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Operator to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- d. any event or circumstance of a nature analogous to any of the foregoing.

## 22.5 Duty to report Force Majeure Event

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

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 22 with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party

knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 22.5., and such other information as the other Party may reasonably request the Affected Party to provide.

## 22.6 Exceptions Applicable to the Operator

The Operator shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement other than the circumstances resulting from an event of Force Majeure:-

- a. Delay in performance by the Operator, subcontractor(s), sub-licensees, agents and employees of the Operator; or
- b. Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project.

## 22.7 Exceptions Applicable to the Authority

The Authority shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement:

- a. the expropriation, confiscation, nationalization or requisition of the Project Assets by the Authority;
- b. the imposition of any blockade, embargo, restrictions, rationing or allocation by the Authority or any competent authority; or
- c. any delay or difficulty in handing over the Project Facilities as a result of any intervention or directive of the Authority or any competent authority.

## 22.8 Effect of Force Majeure after Appointed Date

Upon occurrence of any Force Majeure Event after the Appointed Date, the following shall apply:

- a. The Operator shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect Project Revenues during the subsistence of such Force Majeure Event, the Contract Period shall be extended by the period for which collection of Project Revenues remains suspended on account thereof and
- b. All cost arising out or concerning such Force Majeure Event shall be borne in accordance with provisions of Article 22.10.

## 22.9 Allocation of costs during the subsistence of Force Majeure

Upon occurrence of a Force Majeure Event after Appointed Date, the cost arising out of such event shall be allocated as follows:

- a. Where the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
- b. Where the Force Majeure Event is an Indirect Political Event or Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the Force Majeure Costs) shall be borne by the Operator to the extent of Insurance Cover, and to the extent Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by the Authority to the Operator within 120 (one hundred and twenty) days from the date of receipt of Operator's claim therefore;

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the costs directly attributable to the Force Majeure Event, but shall not include loss of Project Revenue, fee / commercial charges revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent it is relevant.

## 22.10 Termination Notice for Force Majeure Event

If the Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty-five) days, either Party may in its sole discretion terminate this Agreement by giving 15 (fifteen) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save and except as per the provisions of in Article 22.11.

## 22.11 Termination Payment for Force Majeure Event

Upon Termination of this Agreement pursuant to Article 22.11, the Operator shall be entitled to receive and appropriate, from the Authority by way of Termination Payment, 100% of Book Value of Project Assets brought in by the Operator after the Appointed Date. Performance Security, if subsisting, shall be released.

The Termination Payments pursuant to this Article 22.12 shall become due and payable to the Operator by the Authority upon actual or constructive transfer / hand-over of the Project Assets by the Operator to the Authority free from all Encumbrances, charges and liens whatsoever, unless expressly directed by the Authority otherwise.

## 22.12 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution procedure as under Article 22, provided however that the burden of proof as to the

occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

### 22.13 Excuse from performance of obligations

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

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

### 22.14 Liability for other losses, damages etc.

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

## **23 ARTICLE 23: COMPENSATION FOR BREACH OF AGREEMENT**

### **23.1 Compensation for default**

Subject to the provisions of Clause 23.4, In the event of the Operator being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 23.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, and all other costs directly attributable to such material default or breach but shall not include loss of Project Revenues, debt repayment obligations or other consequential losses.

### **23.2 Extension of Contract Period**

Subject to the provisions of Clause 23.4, in the event that a material default or breach of this Agreement set forth in Clause 23.1 leads to suspension of or reduction in collection of Project Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Clause 23.1, extend the Contract Period, such extension being equal in duration to the period by which the collection of Project Revenues remained suspended on account thereof.

### **23.3 Compensation to be in addition**

Compensation payable under this Article 23 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

### **23.4 Mitigation of costs and damage**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## **24 ARTICLE 24: SUSPENSION OF OPERATOR'S RIGHTS**

### **24.1 Suspension upon Operator Default**

Upon occurrence of an Operator Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Operator under this Agreement including the Operator's right to collect Project Revenues, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Operator and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Operator, the Authority shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 90 (ninety) days.

### **24.2 Authority to act on behalf of Operator**

During the period of Suspension, the Authority shall, on behalf of the Operator, collect all commercial charges / revenues under and in accordance with this Agreement.

During the period of Suspension hereunder, all rights and liabilities vested in the Operator in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Operator under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Operator and the Operator undertakes to indemnify the Authority for all costs incurred during such period. The Operator hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 24.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Operator with respect to the Project and its operation and maintenance, and which is used or created by the Operator in performing its obligations under the Agreement.

### **24.3 Revocation of Suspension**

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

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

## 24.4 Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 24.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of an Operator Default.



## 25 ARTICLE 25: TERMINATION

### 25.1 Termination for Operator Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Operator shall be deemed to be in default of this Agreement (the "Operator Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a. the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- b. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Operator fails to cure, within a Cure Period of 60 (sixty) days, the Operator Default for which whole or part of the Performance Security was appropriated;
- c. the Operator abandons or manifests intention to abandon the operation of the Project without the prior written consent of the Authority;
- d. the Operator is in breach of the Maintenance Programme/Requirements or the Safety Requirements, as the case may be;
- e. the Operator has failed to make any payment to the Authority within the period specified in this Agreement;
- f. a breach of any of the Project Agreements by the Operator has caused a Material Adverse Effect;
- g. the Operator creates any Encumbrance in breach of this Agreement;
- h. the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- i. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- j. an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;
- k. the Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the Project;
- l. the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- m. a resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Operator are handed over to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Operator under this Agreement and the Project Agreements; and provided that:

- a. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- b. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Operator as at Appointed Date; and
- c. each of the Project Agreements remains in full force and effect;
- n. any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Operator is at any time hereafter found to be in breach thereof;
- o. the Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- p. the Operator has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- q. the Operator commits a default in complying with any other provision of this Agreement if such default cause a Material Adverse Effect on the Authority.

Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Operator Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 30 (thirty) days to the Operator to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 25.1 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Operator in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Operator:

Provided further that upon written request from the Lenders' Representative and the Operator, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

## 25.2 Termination for Authority Default

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

- a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Operator

Without prejudice to any other right or remedy which the Operator may have under this Agreement, upon occurrence of a Authority Default, the Operator shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

## 25.3 Termination by Authority

The Authority, at its own will / discretion, without any occurrence of default by the Operator or the Authority, and without the liability to give a reason / cause, shall be allowed to terminate this Agreement by issuing a Termination Notice to the Operator to such effect.

Without prejudice to any other right or remedy which the Operator may have under this Agreement, upon issue of such a Termination Notice, the Operator shall, be entitled to a notice period of at least 30 (Thirty) days from the date of receipt of such notice.

## 25.4 Termination Payment

It is clarified that in the event of Termination on account of an Authority Default, 100% of subsisting Performance Security shall be returned to the Operator.

In the event of Termination on account on Operator Default, 100% of subsisting Performance Security shall be forfeited.

Termination Payment shall become due and payable to the Operator within 15 (fifteen) days of a demand being made by the Operator to the Authority with the necessary particulars. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

The Operator expressly agrees that Termination Payment under this Article 25 shall constitute a full and final settlement of all claims of the Operator on account of Termination of this Agreement for any reason whatsoever and that the Operator shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## 25.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project Facilities forthwith;
- b. take possession and control of all materials, stores, implements, and equipment on or about the Project Facilities;
- c. be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Project Facilities or any part of the Project;
- d. require the Operator to comply with the Divestment Requirements set forth in Clause 25.1; and
- e. succeed upon election by the Authority, without the necessity of any further action by the Operator, to the interests of the Operator under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Operator. For the avoidance of doubt, the Operator acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Operator and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

## 25.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 25.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## **26 ARTICLE 26: DIVESTMENT OF RIGHTS AND INTEREST**

### **26.1 Divestment Requirements**

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

- a. notify to the Authority forthwith the particulars of all Project Assets;
- b. deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
- c. cure all Project Assets, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements;
- d. deliver and handover, in entirety, relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its operation and maintenance, including all programmes and manuals pertaining thereto, as on the Handover Date. For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation and maintenance of the Project Facilities and shall be assigned to the Authority free of any encumbrance;
- e. handover and / or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

### **26.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Expert(s) shall verify, after giving due notice to the Operator specifying the time, date and venue of such verification, compliance by the Operator with the Maintenance Requirements. Defaults, if any, in the Maintenance Requirements shall be cured by the Operator at its cost and the provisions of Article 27 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 26.

### **26.3 Cooperation and assistance on handover of Project**

The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth handover of the Project in accordance with the provisions of this Agreement

so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Project Facilities.

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

The Authority shall have the option to purchase or hire from the Operator at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 26.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

#### **26.4 Divestment costs etc.**

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

In the event of any dispute relating to matters covered by and under this Article 26, the Dispute Resolution Procedure shall apply.

## **27 ARTICLE 27: DEFECTS LIABILITY AFTER TERMINATION**

### **27.1 Liability for defects after Termination**

The Operator shall be responsible for all defects and deficiencies in the Project for a period of 60 (sixty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Expert in the Project during the aforesaid period. In the event that the Operator fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Operator's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Operator to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Operator's Payment.

## **28 ARTICLE 28: ASSIGNMENT AND CHARGES**

### **28.1 Restrictions on assignment and charges**

Subject to Clauses 28.2, this Agreement shall not be assigned by the Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

Subject to the provisions of Clauses 28.2, the Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Operator is a party.

### **28.2 Permitted assignment and charges**

The restraints set forth in Clauses 28.1 shall not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project; and
- b. liens or encumbrances required by any Applicable Law.

### **28.3 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Operator, assign and/or transfer any of its rights and benefits and / or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.



## **29 ARTICLE 29: CHANGE IN LAW**

### **29.1 Increase in costs**

If as a result of Change in Law, the Operator suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of 10% (ten percent) of costs or reduction in 10% (ten percent) of Project Revenues in any Accounting Year, the Operator may so notify the Authority and propose amendments to this Agreement so as to place the Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Operator, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement;

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Operator may by notice require the Authority to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 29.1 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

### **29.2 Reduction in costs**

If as a result of Change in Law, the Operator benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of 10% (ten percent) of costs or reduction in 10% (ten percent) of Project Revenues in any Accounting Year, the Authority may so notify the Operator and propose amendments to this Agreement so as to place the Operator in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement;

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Operator to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Operator shall pay the amount specified therein to the Authority; provided that if the Operator shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 29.2 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

### 29.3 Protection of NPV

Pursuant to the provisions of Clauses 29.1 and 29.2 and for the purposes of placing the Operator in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

### 29.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 29 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

### 29.5 No claim in the event of recovery from Users

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

## **30 ARTICLE 30: LIABILITY AND INDEMNITY**

### **30.1 General indemnity**

The Operator will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, ("the Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Operator to any user or from any negligence of Operator under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

The Authority will indemnify, defend, save and hold harmless the Operator against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Project Site, and/or (ii) defects in structure of the building structures forming a part of the Project Facilities, and/or (iii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Operator.

### **30.2 Indemnity by the Operator**

Without limiting the generality of Clause 30.1, the Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Operator to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator's contractors, sub-licensees, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors.

Without limiting the generality of the provisions of this Article 30, the Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator's Contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit,

action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorizing continued use of the infringing work. If the Operator is unable to secure such licence within a reasonable time, the Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### 30.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 30 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 30.4 Defence of claims

The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 30, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

If the Indemnifying Party has exercised its rights under Clause 30.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

If the Indemnifying Party exercises its rights under Clause 30.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 30.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### 30.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 30, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature except as expressly provided in this Agreement.

### 30.6 Survival on Termination

The provisions of this Article 30 shall survive Termination.

## **31 ARTICLE 31: RIGHTS AND TITLE OVER THE SITE**

### **31.1 Rights**

For the purpose of this Agreement, the Operator shall have rights to the use of the Project Facilities as sole Rights-holder subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project Facilities by third parties in accordance with and subject to the provisions of this Agreement.

### **31.2 Access rights of the Authority and others**

The Operator shall allow free access to the Project Facilities at all times for the authorized representatives of the Authority and the Expert(s), to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

### **31.3 Property taxes**

All property taxes shall be payable to the relevant regulatory bodies by the Authority as owner of the land.

### **31.4 Restriction on sub-licensing for operations**

The Operator shall not sub-License or sub-let the whole of the Project Facilities, save and except as may be expressly set forth in this Agreement. However, the Operator shall be allowed to license/ sub contract part facility of the Project Facilities with prior approval of the Authority. All agreements or arrangements with the sub-licensees shall specifically have stipulation of a covenant that the sub-licenses shall be co-terminus with the termination of this agreement.

- a. Subcontracting / sub-License can be done only to firms which have prior experience in the field / background for atleast 3 years.
- b. The subcontracting / sub-License period shall not exceed one year after which the contract shall be renewed by the Operator.
- c. The subcontractor / sub-licensee however cannot subcontract / sub-license the space further to another party. The subcontractor / sub-licensee shall be involved directly in the operation and maintenance of the facility outsourced.

## 32 ARTICLE 32: DISPUTE RESOLUTION

### 32.1 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.

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

### 32.2 Deleted

### 32.3 Arbitration

Any Dispute which is not resolved amicably shall be finally decided by reference to arbitration. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and its amendments / modifications. The place of such arbitration shall be in Diu and the language of arbitration proceedings shall be English.

The arbitration shall be conducted by a sole arbitrator to be appointed by the Secretary, Tourism Department of the UT Administration of Daman and Diu.

The arbitrator shall make a reasoned award (the **“Award”**). Any Award made in any arbitration held pursuant to this Article 32 shall be final and binding on the Parties as from the date it is made, and the Operator and the Authority agree and undertake to carry out such Award without delay.

The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.

This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

The Cost incurred on the process of arbitration including inter alia the fees of the arbitral tribunal and the cost of proceedings shall be borne by the Parties in equal proportions. Each Party shall bear its own legal fees incurred as a result on any Dispute under this Article 32.

### 32.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Operator and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 32.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

## 32.5 Performance during Dispute

Performance of this Agreement shall continue during the settlement of any Dispute under this article 32. The provisions for dispute settlement shall be binding upon the successors; assigns and any trustee or receive of either the Authority or the Operator.



## **33 ARTICLE 33: DISCLOSURE**

### **33.1 Disclosure of Specified Documents**

The Operator shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the project location and Operator's Registered Office. The Operator shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

### **33.2 Disclosure of Documents relating to safety**

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

### **33.3 Withholding of documents**

Notwithstanding the provisions of Clauses 33.1 and 33.2, the Authority shall be entitled to direct the Operator, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 33.1 and 33.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **34 ARTICLE 34: REDRESSAL OF PUBLIC GRIEVANCES**

### **34.1 Complaints Register**

The Operator shall maintain a public relations office at the facility where it shall keep a register (the "Complaint Register") open to public access at all times for recording of complaints by users (the "Complainant"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Operator at the Project Facilities so as to bring it to the attention of all Users.

The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Operator. Immediately after a complaint is registered, the Operator shall give a receipt to the Complainant stating the date and complaint number.

Without prejudice to the provisions of Clauses 34.1, the Authority may, in consultation with the Operator, specify the procedure for making complaints in electronic form and for responses thereto.

### **34.2 Redressal of complaints**

The Operator shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Operator to the Complainant under a certificate of posting.

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

## **35 ARTICLE 35: MISCELLANEOUS**

### **35.1 Governing law and jurisdiction**

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

### **35.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

- a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

### **35.3 Depreciation and interest**

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Operator in the Project Facilities shall be deemed to be acquired and owned by the Operator. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Operator under the Applicable Laws.

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

### **35.4 Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

## 35.5 Waiver

Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## 35.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- a. no review, comment or approval by the Authority or the Expert(s) of any Project Agreement submitted by the Operator nor any observation or inspection of the operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. the Authority shall not be liable to the Operator by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

## 35.7 Exclusion of implied warranties etc.

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

## 35.8 Survival

Termination shall:

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

All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

### **35.9 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any terms, conditions and obligations of the Operator arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement, treated as such and shall be binding on the the Operator.

### **35.10 Severability**

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

### **35.11 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **35.12 Third Parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **35.13 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

### 35.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the Operator, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Diu may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Operator may from time to time designate by notice to the Authority;
- b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Secretary, Tourism Department, UT Administration of Daman Diu, with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in Kolkata, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

### 35.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

### 35.16 Counterparts

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

## **36 ARTICLE 36: HANDOVER OF PROJECT**

On the Handover Date, the Operator shall, handover and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Operator after the Appointed Date of all the Operator's right, title and interest in and to the works/ immovable assets. However all the movable assets brought in by Operator shall be the property of the Operator and shall be handed over to him after the end on the Contract Period. The Operator shall also deliver to the Authority or its nominated agency on such date such operating and maintenance manuals, plans, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the Project either directly or by its nominated agency. The personnel of the Operator shall continue to be the employees of the Operator and the handover of all the immovable assets shall not in any manner affect their status as employees of the Operator and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.

The Operator shall to the extent possible assign to the Authority or its nominated agency at the time of handover all unexpired guarantees and warranties by subcontractors / sub-licensees and suppliers and all insurance policies on immovable assets. The Operator shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Operator has approved such assignment under the terms and conditions of the relevant contract.

The Operator shall, to the extent possible at the time of handover, assign to the Authority or its nominated agency all contracts, supply contracts and all other contracts relating to the Project entered into by the Operator and subsisting at the time of handover except any contracts with employees.

6 (six) months prior to the Handover Date, the Authority shall be entitled to appoint any Consulting Expert(s) to assess the condition of the Project. Such Consulting Expert(s) shall be entitled to have free access to inspect the Project, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project.

Until the Handover Date, all risks shall lie with the Operator for loss of or damage to the whole or any part of the Project, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement.

The Operator shall provide fair and just compensation to its employees as required under the Laws or under this Agreement, and shall indemnify the Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Operator's employees, staff, labour etc.

The Authority shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Handover of the Project to it by the Operator.

On the Handover Date, the Operator shall hand over the Project with all the immovable assets to the Authority or its nominated agency at zero cost.

From the Handover Date, the obligations and the rights of the Operator under this Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Project and the operation and maintenance and any other rights or obligations arising out of this Agreement which either expressly or implicitly survive termination of this Agreement; provided, however, that the Operator may continue with any other business operations arising other than in connection with this Agreement and; provided further that the Operator shall no longer act in its capacity as Operator in relation or pursuant to this Agreement.

On completion of the handover by the Operator to the Authority, the Authority and shall issue an 'Operation and Maintenance Completion Certificate' to the Operator. The Operation and Maintenance Completion Certificate will have the effect of constituting evidence of handover of all rights, titles and interests in the Project by the Operator, and their vesting in the Authority hereto.

SIGNED SEALED AND DELIVERED

for and on behalf of

\_\_\_\_\_ (Authority) by:

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

\_\_\_\_\_ (Name)

\_\_\_\_\_

(Designation) SIGNED SEALED AND

DELIVERED

for and on behalf of

M/s \_\_\_\_\_ (Operator and Lead Member of the SPV) by:

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

\_\_\_\_\_ (Name)

\_\_\_\_\_



(Designation) SIGNED SEALED AND  
DELIVERED

for and on behalf of

M/s \_\_\_\_\_ (Operator and Non-Lead Member of the SPV) by:

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

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

In the presence of

1. \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

2. \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

as per the specific provisions in this regard provided in this Operation and Maintenance Agreement.

## **Section 3**

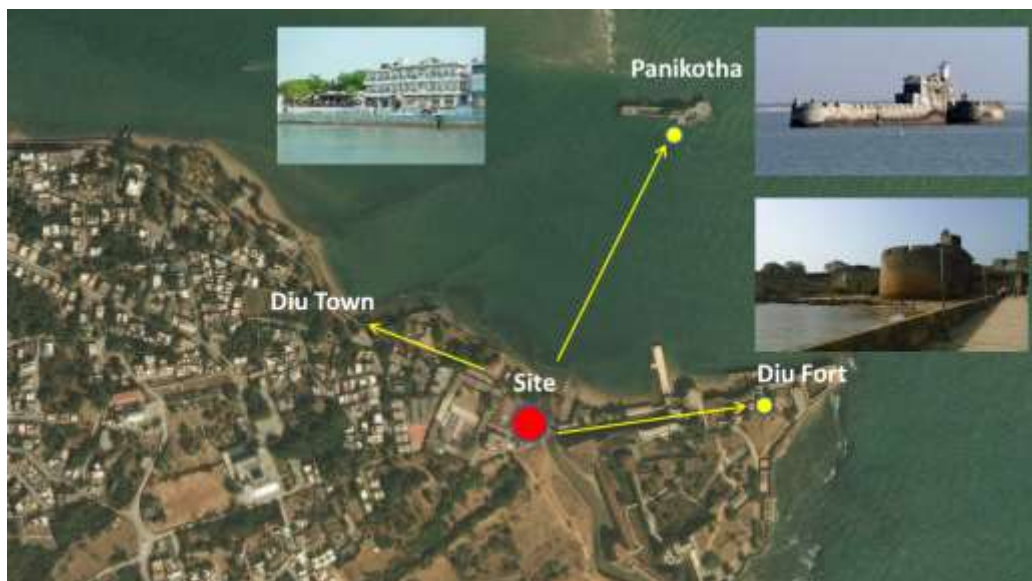
# Schedules to Operation and Maintenance Agreement

# 1. Schedule A – The Project Site, Project Facilities & Scope of Work

## 1.1. Project Site

The Authority – Diu Tourism Dept has a hotel property known as Fort Circuit House located facing the sea along the Fort Road near the Diu Fort which is the most visited place in Diu. The Circuit house provides exotic view of Diu fort - a 16th Century historical monument, and view of Panikotha Fortim Do Mar an island outpost built in the shape of a ship in the Arabian Sea. The plot has an area of 2900 SqM with G+2 floor hotel under construction having 42 rooms, restaurant, meeting room, Courtyard, Recreation Room, Reception and Lounge & landscaped premises.

### Site Location Map



View of the hotel property:



## 1.2. Project Facilities:

The property is designed as a hotel with G+2 floors and built-up area Approx 4562 sqm. The Hotel has 42 Rooms with the following configuration.

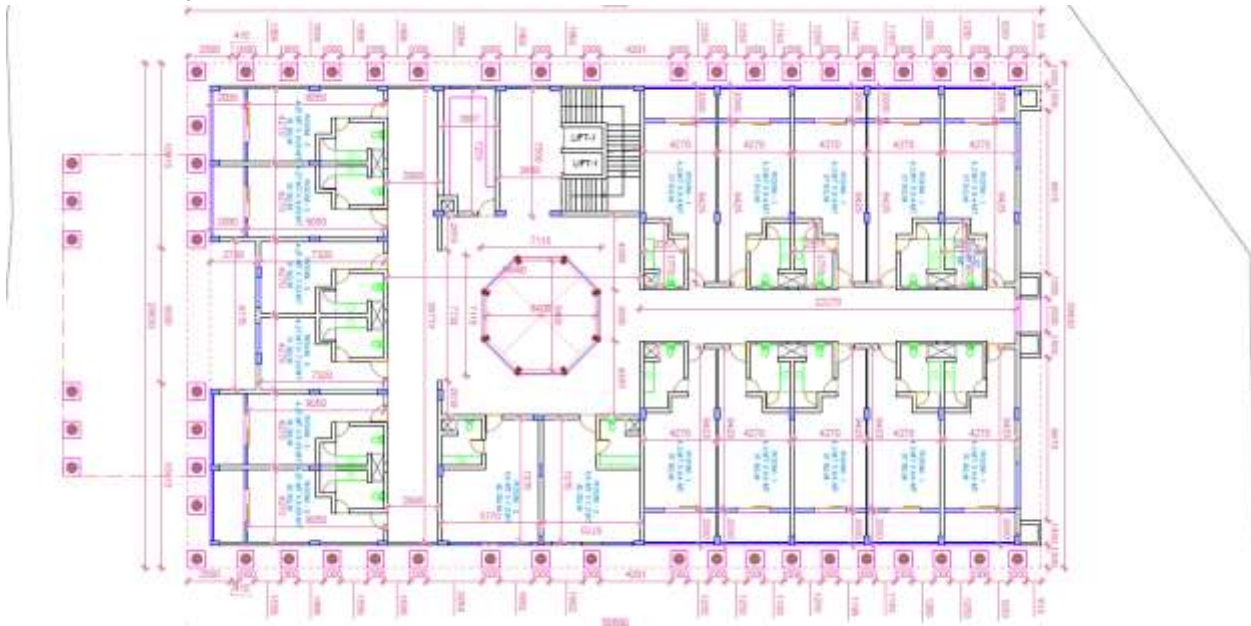
Room Type	No. of Rooms	Room Size
Executive Room	30	40.42 Sqm
Deluxe Room	4	41.76 Sqm
Standard Room	6	33.81 Sqm
Suit Rooms	2	68.62 Sqm
Restaurant		176.61 Sqm
Office Area		52 Sqm
Meeting Room		35 Sqm
Courtyard		
Store and Linen Room		23.04 Sqm
Recreation Room		63.51 Sqm
Reception and Lounge		300 Sqm

The site has dedicated parking spaces for the hotel.

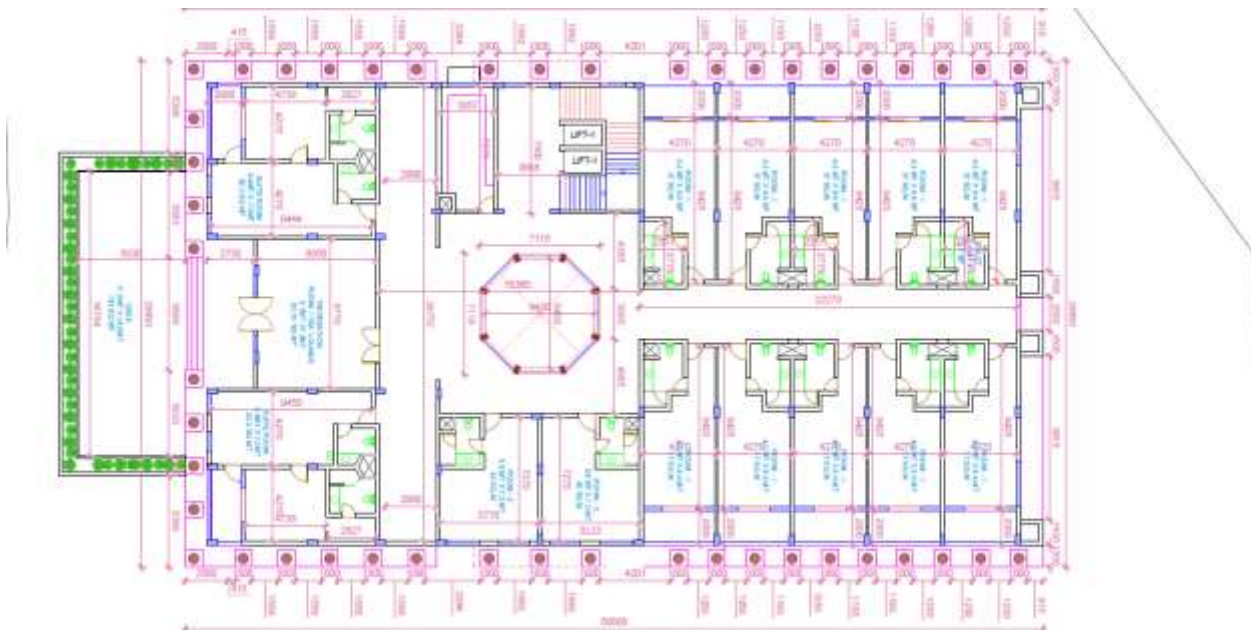




### First floor Layout of Fort Circuit House



### Second floor Plan of Fort Circuit House



**Birds eye view of proposed Fort Circuit House**



**Lounge view at night of proposed Fort Circuit House**





**Standard Room view of proposed Fort Circuit House**



**Suite Bedroom Room view of proposed Fort Circuit House**





**Reception view of proposed Fort Circuit House**



**Central Courtyard View at Ground Floor of proposed Fort Circuit House**



### 1.3. Scope of work of the Operator

The scope of the Project (the "Scope of the Project") shall mean and include, during the Operation and Maintenance Period:

- A. Financing, operation and maintenance of the Hotel during the Term in accordance with the provisions of this Agreement
- B. The Operator shall procure and manage on its own, all movable/ consumable items including crockery, bed linens, toiletries, utensils, cutlery, stationery etc. necessary for Property Operations as a Hotel. The procurement shall be completed before Commercial Operations Date (COD) i.e. within 90 Days from the Appointed Date. The Operator will not have the right to modify the civil work and shall not harm / damage the civil structure of the property, nor shall it make any additions to the existing structure.
- C. The Operator shall be responsible for complete operations, maintenance and management of the Project Facilities in accordance with good industry practices. Save and except in case of default by Authority as per Clause 25.2 and/ or Force Majeure as per Article 22, the Operator shall keep the property operational and ready for use at all times during the period starting from Commercial Operations Date (COD) to the Expiry / Termination Date.
- D. The Operator shall have the exclusive right to market, manage bookings, fix charges / rates and retain revenues for operations of the Project Facilities.
- E. Recruit the managers and staff in the Hotel for its smooth functioning and to maintain the level of service as required for the property.
- F. To sub-license part of Project Facilities as necessary. All such sub-licenses shall be co-terminus with the Operation and Maintenance. The Operator shall obtain prior approval of the Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the Operator shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee.
- G. To promptly handover to the Authority, upon expiry or termination of the Agreement period, the Project Facilities, including all movable and immovable assets provided by the Authority at the start of the tenure, in good condition and at zero cost. It must be noted that this will not include any movable items brought in by the Operator during the Project tenure.
- H. The Operator must reserve 4 Rooms for the UT Administration Diu, (with applicable discounted rate as per UT employee's eligibility). These rooms can be booked for public only with prior consent of Collector Diu.
- I. The Operator must reserve additional 10 rooms for allocation on 48 hrs notice as per request given by the Collector Diu / Tourism department Diu, for UT Administration employees on Current room Tariff basis

Performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement

***It is clarified herewith that in addition to the above-stated "Scope of the Project", the Operator shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Agreement, the Schedules to the Operation and Maintenance Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the execution of the Project.***

#### **1.4. Specifications of the Project Facilities Provided by the Authority**

- A. List of capital works to be provided by the Authority :
  - I. Civil Works for complete Hotel property, including:
    - a. Basic structural works including water-proofing
    - b. Façade work
    - c. Exterior finishes
  - II. Plumbing works within the Hotel property
  - III. Electrical works
  - IV. HVAC
  - V. Firefighting and suppression systems
  - VI. Finishing
    - a. Floor Finish
    - b. Wall Finish on plaster surface
    - c. False Ceiling
  - VII. Fixtures
    - a. Electrical
      - i. Connection from respective DB to Switch Board
      - ii. Room wiring
      - iii. Wiring, cable trays, raceways etc. in common areas of Hotel property
      - iv. Switches / switchboards / electrical devices in rooms
      - v. Decorative lighting
      - vi. All fittings and fixtures related to internal electrical works
    - b. HVAC – Branch line, duct lining, duct insulation, acoustics and diffuser
    - c. Fire Fighting – Sensors, diffusors, alarm system and other room fittings
    - d. Sanitary fixtures and fittings
  - VIII. Interior Fittings
    - a. Door and door fittings
    - b. All CP fittings
    - c. Other interior works
  - IX. Graphics and signages
  - X. Security network within the Project Site including CCTV camera, barricades, security guards etc.

Furniture within common areas and guest rooms including beds, table, chairs etc.

## 2. Schedule B – Performance Security

B.G. No. Dated:

1. In consideration of you,....., having its office at ....., (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Operator” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Running of the Hotel property (hereinafter referred to as “Property” pursuant to the RFP Document .....dated ..... issued in respect of the property and other related documents including without limitation the draft Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Operator, do hereby in terms of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Operator and unconditionally and irrevocably undertake to pay forthwith to Tourism Department, UT of Daman and Diu (hereinafter referred to as the “Authority”) an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Operator if the Operator shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by Authority stating that the Operator is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents and shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Operator any other person and irrespective of whether the claim of Authority is disputed by the Operator or not, merely on the first demand from Authority stating that the amount claimed is due to Authority by reason of failure of the Operator to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Operator to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees ..... only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 5 (Five) years from the LOA or for such extended period as may be mutually agreed between Authority and the Operator, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

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

- 10. It shall not be necessary for Authority to proceed against the said Operator before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Authority may have obtained from the said Operator or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
- 11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of Authority in writing.
- 12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
- 13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... (Rupees ..... in Words only). The Bank shall be liable to pay the said amount or any part thereof only if Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before 5.00 pm Indian Standard Time on the Expiry Date.

Signed and Delivered by ..... Bank

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

(Signature of the Authorized Signatory)

(Official Seal)

## **3. Schedule C – Maintenance Requirements**

### **3.1. Maintenance Requirements**

The Operator shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Operator shall, at all times during the Contract Period, conform to the operation and maintenance requirements as per Good Industry Practices.

The Operator shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-C within the standard time limit and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 12.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

### **3.2. Repair/rectification of defects and deficiencies**

The obligations of the Operator in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in accordance with Good Industry Practice.

The Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Operator within the time limit specified by the Expert, as and when required.

### **3.3. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule-C, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the standard time, the Operator shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Expert and conveyed to the Operator and the Authority with reasons thereof.

### **3.4. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule-C, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Operator shall promptly take all reasonable measures for eliminating or minimizing such danger.

### **3.5. Daily Inspection by the Operator**

The Operator shall, through its Expert, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Expert may specify. Such record shall be kept in safe custody of the Operator and shall be open to inspection by the Authority and the Expert at any time during office hours.

### 3.6. Divestment Requirements

All defects and deficiencies specified in this Schedule-C shall be repaired and rectified by the Operator so that the Project conforms to the Maintenance Requirements on the Transfer Date.



## **4. Schedule D – Expert(s)**

### **4.1. Appointment of Expert**

The Authority may appoint / nominate an in-house / external expert (the “Expert”) at no expense to the Operator.

### **4.2. Duties and functions**

- I. The Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth below
- II. The Expert shall submit regular periodic reports (at least once every quarter) to the Authority in respect of its duties and functions set forth in Schedule-L.

### **4.3. Termination of appointment**

The Authority shall endeavour that Expert as appointed shall continue for as long period as possible but may in its discretion, appoint another Expert in any unavoidable circumstances.

If the Operator has reason to believe that the Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Operator and Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Operator remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the change of Expert is considered appropriate, the Authority shall appoint forthwith another Expert.

### **4.4. Dispute resolution**

If either Party disputes any advice, instruction, decision, direction or award of the Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## **5. Schedule E – Terms of Reference for Expert**

### **5.1. Role and functions of the Expert**

5.1.1. The role and functions of the Expert shall include the following:

- i. review, inspection and monitoring of interior works related to Project Facilities;
- ii. review, inspection and monitoring of Operations & Maintenance;
- iii. review, inspection and monitoring of Divestment Requirements;
- iv. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- v. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- vi. undertaking all other duties and functions in accordance with the Agreement.

5.1.2. The Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

### **5.2. Operation & Maintenance**

5.2.1. The Expert shall review the annual Maintenance Programme furnished by the Operator and send its comments thereon to the Authority and the Operator within 15 (fifteen) days of receipt of the Maintenance Programme.

5.2.2. The Expert shall review the quarterly status report furnished by the Operator and send its comments thereon to the Authority and the Operator within 7 (seven) days of receipt of such report.

5.2.3. The Expert shall inspect the Project twice every 6 months, preferably after receipt of the quarterly status report from the Operator and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Expert shall send a copy of its O&M Inspection Report to the Authority and the Operator within 7 (seven) days of the inspection.

5.2.4. The Expert may inspect the Project more than once every six months, if any lapses, defects or deficiencies require such inspections.

5.2.5. The Expert shall in its O&M Inspection Report specify the tests, if any, that the Operator shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Operator in this behalf.

5.2.6. In respect of any defect or deficiency, the Expert shall, in conformity with Good Industry

Practice, specify the permissible limit of deviation or deterioration with reference to the

- 5.2.7. Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.2.8. The Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Operator to the Authority for such delay.
- 5.2.9. The Expert shall examine the request of the Operator for closure of any facility(ies) for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in operations and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Operator. Upon expiry of the permitted period of closure, the Expert shall monitor the re-opening of such facility(ies), and in case of delay, determine the Damages payable by the Operator to the Authority under Clause 12.8.
- 5.2.10. The Expert shall monitor and review the curing of defects and deficiencies by the Operator as set forth in Clause 14.4.
- 5.2.11. In the event that the Operator notifies the Expert of any modifications that it proposes to make to the Project, the Expert shall review the same and send its comments to the Authority and the Operator within 15 (fifteen) days of receiving the proposal.

### **5.3. Termination**

- 5.3.1. At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Expert shall, in the presence of a representative of the Operator, inspect the Project for determining compliance by the Operator with the Divestment Requirements set forth in Clause 26 and, if required, cause tests to be carried out at the Operator's cost for determining such compliance. If the Expert determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 12.7.
- 5.3.2. The Expert shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Operator in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Operator.

### **5.4. Determination of costs and time**

- 5.4.1. The Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

5.4.2. The Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

### **5.5. Other duties and functions**

5.5.1. The Expert shall perform all other duties and functions specified in the Agreement.

### **5.6. Miscellaneous**

5.6.1. The Expert shall notify its programme of inspection to the Authority and to the Operator, who may, in their discretion, depute their respective representatives to be present during the inspection.

5.6.2. A copy of all communications, comments, instructions, or Documents sent by the Expert to the Operator pursuant to this TOR, and a copy of all the test results with comments of the Expert thereon shall be furnished by the Expert to the Authority forthwith.

5.6.3. The Expert shall obtain, and the Operator shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Operator to the Expert, whereupon the Expert shall send one of the copies to the Authority along with its comments thereon.

5.6.4. Upon completion of its assignment hereunder, the Expert shall duly classify and list all Documents, results of tests and other relevant records, and hand them over to the Authority and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

5.6.5. Wherever no period has been specified for delivery of services by the Expert, the Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.