



## DIU SMART CITY LIMITED

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NO. DMC/DIU/CONST/SMART CITY/2019-20/ 205

Dated: 15-07-2020

Tender No. 5/2020-21/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.     | Development of Gaming Zone at FCS Warehouse | Rs. 5,000/- | Rs. 5,00,000/- |

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  | 15/07/2020 to 05/08/2020 15:00 hrs |
| 2. | Pre bid meeting   | 23/07/2020 11:00 hrs               |
| 3. | Date of Online submission   | 05/08/2020 16:00 hrs               |
| 4. | Date of Physical document submission  | 12/08/2020 17:00 hrs               |
| 5. | Date of online opening of technical bid   | 13/08/2020 11:00 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

## Development of Gaming Zone at FCS Warehouse



Tender No. **05/2020-21/DSCL-Diu**

Bid due date: 05-08-2020

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 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 Agreement to be executed by the Diu Smart City Ltd 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 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.

**'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.

**'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 FDR 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 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 Agreement;

## 1. INTRODUCTION

### 1.1. Background

1.1.1. Diu Smart City Ltd (“DSCL” or Authority), 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 development a Gaming zone at FCS warehouse.

### 1.2. Project Summary

| S.No | Parameters                 | Details  |
|------|----------------------------|--|
| 1.   | Project Title              | Development of Gaming Zone at FCS Warehouse  |
| 2.   | Location                   | Food & Civil Supply warehouse, Bandar Chowk, Fort Road, Diu  |
| 3.   | Authority                  | Diu Smart City Ltd   |
| 4.   | Scope of Work              | Develop Existing FCS warehouse as a Gaming zone  |
| 6.   | Format                     | License Basis  |
| 7.   | Agreement Period           | 5 Years (Extendable by 2 more years 1 year at a time)  |
| 8.   | Payments to the Authority  | <b>Quarterly Payment to the Authority</b>  |
| 9.   | Other Financial Covenants  | <b>Bid / Proposal Security (EMD):</b> INR 5 Lakh (Rupees Five Lakh only), via Demand Draft in favour of Chief Executive Officer, DSCL, Diu.<br>“The Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department or start-ups as recognized by Department of Industrial Policy and Promotion (DIPP) are exempted from submission of Bid Security.”<br><b>Performance Security:</b> Equivalent to the Annual License Fee quoted by the bidder, in the form of FDR/Demand Draft |
| 10.  | Contact Person - Authority | Chief Executive Officer, Diu Smart City Ltd.<br>Telephone No: +91 (02875)-252126, 253638<br>Email ID :- <a href="mailto:diudscl@gmail.com">diudscl@gmail.com</a>   |
| 11.  | RFP processing fee         | Non-refundable INR 5,000/- (Rupees Five Thousand Only) in the form of Demand Draft (DD) issued from a nationalized Bank in India in favour of the ‘ <b>Chief Executive Officer, DSCL, Diu</b> ’ payable at Diu.  |

|  |  |  |
|--|--|--|
|  |  | “The Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department or start-ups as recognized by Department of Industrial Policy and Promotion (DIPP) are exempted from the Cost of RFP Document.” |
|--|--|--|

### 1.3. Important Dates:

| S. No | Event Description  | Date   |
|-------|--|--|
| 1.    | Availability of Bid Documents at online portal               | 15-07-2020                                       |
| 2.    | Last date for receiving queries                              | 22-07-2020 up to 16:00 hrs.                      |
| 3.    | Pre-Bid Conference   | 23-07-2020 from 11:00 hrs.<br>To 1300 hrs.       |
| 4.    | Last date for downloading the Bid documents from the website | 05-08-2020 up to 15:00 hrs.                      |
| 5.    | Last date for Submission of e-bids                           | 05-08-2020 up to 16:00 hrs.                      |
| 6.    | Opening date and time of technical e-bids                    | 13-08-2020 at 11:00 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 Agreement   | Within 60 days of issue of LOA.                  |

## 2. Scope of Work

### 2.1. Scope of Work

In order to tap the existing potential of tourism in the Diu, it is proposed to develop a Gaming zone in the Food & Civil Supply warehouse near Bandar Chowk on Fort Road. The intent of the project is to develop, install & operate a Gaming Zone for the families with small children to teenagers to all age group in the city and tourist visited to Diu. This zone will offer experience of adventure/entertainment based activities with a refreshments area cafeteria & souvenir shop as a complete day package.

#### **Scope of Work:-**

The Project envisages the following scope of work;

- a) To prepare the comprehensive concept plan and design for the proposed gaming zone and getting them approved from the authority or their authorized representative, local bodies and other agencies.
- b) To develop/construct the gaming zone by creating below Indicative listed activities and not limited to;
  1. Bowling Alley
  2. Mechanical Bull Ride
  3. Indoor Rock Climbing
  4. Arcade Video Games
  5. Virtual Reality Games
  6. Interactive Projector Based Game
  7. Basket Ball
  8. Ice Hockey
  9. King of Hammer
  10. Indoor Cricket
  11. Kids Zone with small activities for kids such as battery operated cars, bouncing alleys etc.

(Above list of activities is indicative only, bidder can propose other games which is to be approved by authority)

- c) The Licensee can construct restaurant and souvenir shop in 20% (Maximum) of allotted Space with prior approval from authority.
- d) The civil work and gaming equipment installation work to be completed within Six months.
- e) To operate/run the Project at all the times during the License Period.
- f) To collect revenues during operation period including fee from the users of the gaming zone and any other charges for amenities provided under the Project as approved by DSCL/DMC.

g) The bidder shall bear/pay all applicable taxes, fees, rates and duties.

Note: All the above mentioned activities can be utilized by the tourists/ citizen on chargeable basis. The Operator will levy charges directly from them. All permissions and safety measures to be taken by the operator only. Any other activity can be organized subject to approval from The Authority.

All other infrastructure support like ticketing counter, power supply, and various permissions shall be arranged by selected bidder. However, administrative support to get approvals may be facilitated by the authority. Any activity/activities requiring permanent set up or infrastructure shall not be permitted under this tender without prior approval from Authority.

Activities With all high standard safety and security measures for overall operation of the activity allocating appropriate skilled manpower for operating and maintaining the activity, Ticket Counters etc and measures for public safety to be ensured.

## **2.2. Responsibilities of the Authority**

2.2.1. DSCL shall provide FCS Warehouse “As is where is basis” for development of gaming zone.

1. The Authority shall continue to have all rights and control over the licensed premises as its Authority, subject to the rights of the Operator hereunder including the right to inspect the various services offered by the selected bidder by itself or its Authorized Representatives, officers and Employees.
2. The Authority may facilitate (without any obligation) obtaining licenses from relevant authorities for the operation of the Gaming Zone.

## **2.3. Rights and Responsibilities of the Operator**

Notwithstanding anything to the contrary contained in the Tender document. Expressed or implied, the Operator shall remain at all times exclusively responsible to provide all materials, manpower and equipment that are needed to ensure that the contractual obligations are fulfilled by the Operator to the satisfaction of the Authority.

1. Operator shall have to procure all the Gaming equipment as per requirement for gaming zone.
2. All the expenditure on purchase of equipment and their operation, maintenance, replacement would be the responsibility of the Operator.
3. Operator shall have to Operate and maintain the gaming zone with all necessary safety compliances.
4. Operator shall be pay License fee as per agreement without any delay.
5. All permissions/clearances from respective statutory authorities for operation of gaming zone to be obtained by the Licensee directly.

6. Operator shall not use the facility / premises for any purpose other than for operating a gaming zone or other approved activity.
7. Operator shall meet all legal and financial obligations and shall pay all lawful taxes, assessments or charges which may be levied by the tax assessment levying agencies, including corporate tax or any other taxes or charges levied from time to time by any Government authority
8. Operator shall not indulge or allow anybody else to indulge in anything, which may be or become or occur to be danger, nuisance or annoyance to the Authority or any other agency in the vicinity of the licensed area.
9. The persons employed by the Operator shall at all times and for all purpose shall be the employees of the Operator who shall alone be liable and responsible for payment of all kinds of wages, salaries, remuneration and other benefits etc. to them without claim or reimbursement from the Authority.
10. It shall be the responsibility of Operator to ensure that the character antecedent of such personnel deployed by it for work have been duly verified by the Police authorities and shall produce such police verification on demand.
11. All safety provision should be brought to the notice of all staff/ workers by the Operator. Any negligence on this account, the Operator shall be responsible for that.
12. Operator shall not store any goods not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the licensed premises. The Operator shall be liable or responsible for destruction or damage to the licensed premises.
13. Operator shall observe abide and comply with all statutory laws, bye laws rules and regulations or provisions of all the laws including the rules and regulations of any local authority in force from time which are vogue or may be made applicable to the business from time to time which the Operator is allowed to carry out under the license. Operator shall submit a certificate to the Authority regarding compliance of all the statutory requirements under which various statutes in respect of persons employed it.
14. Operator shall not under let, sublet, encumber, mortgage, assign or transfer their right and interest or part with possession of the land and building thereon or any part thereof of the licensed premises for sharing therein to any person directly or indirectly in any circumstances and the Operator shall have no right to use the premises for the purpose other than the purpose of Gaming Zone.
15. The licensee would be operating the services for a period of 5 Years (Extendable by 2 more years 1 year at a time) years from date of signing the agreement or date of handing over the premises to licensee, whichever earlier. After the expiry of the period of license, or extended license or on termination of license, the Operator should immediately hand over the vacant possession of the premises to DSCL.
16. All the expenditure on publicity and marketing of the Gaming Zone would be the responsibility of the Operator.

17. The License shall be in force for the period stipulated in the license and on expiry thereof it shall be deemed to have been terminated (ipso facto) automatically. Further, the Operator shall not have any right, either contractual or equitable, to demand any fresh license for another term or to continue the same in preference to any other intending agency.
18. Notwithstanding anything contained in other clauses of the bid document, if any time during the period of the license is, it is observed that the services are not being run properly by the Operator or there is any breach of the terms and conditions of license, the Authority will assess the position and if it is of the view that the Operator is violating the terms and conditions of the license or not in a position to run the services strictly as per terms and conditions of license, Authority shall have a right to terminate the license by giving a notice period of maximum 15 days to the Operator.
19. Operator shall fully comply with all the applicable laws, Rules & Regulations relating to PF. Act including the payment of PF contributions. Payment of Bonus Act, Minimum Wages Act, Workmen's compensation Act. ESIC, C.L. (R&A) Act, Migrant Labour Act, and/or such other Acts or Laws, regulations passed by the Central, State, Municipal and Local Government Agency or authority, including TDS as per IT Act, applicable from time to time.
20. Operator shall be responsible for proper maintenance of all registers, records and accounts so far as these relate to the compliance of any statutory provisions/obligations. The Authority shall have every right to examine all or any such records and seek its production for the purpose of inspection at any time. The Operator shall be responsible for maintaining records pertaining to payment of wages Act and also for depositing the PF contributions, if required, with authorities concerned.
21. Operator shall bind himself/his executors, administrators and shall indemnify and hold harmless the Authority, in respect of this License, including all of its claims, damages, proceedings, costs, charges and/or any expenses whatsoever which may be imposed, enforced or brought against The Authority or any of its members, officers, employees for reasons of or consequent upon any breach or default on the part of the license in respect of violation of any of the provisions of Law/Act Rules or regulations having the force of a law or if any award of decision by any competent tribunal court or authority in respect of the workmen or any one employed/engaged by the Operator in connection with this License. Such indemnity bond has to be executed on a non-judicial stamp paper worth Rs 100/-. The cost of such stamp paper, and any documentation charges etc. shall be borne by the Operator.
22. Operator shall be responsible for all the claims of his employees and the employees of the Operator shall not make any claim whatsoever against the Authority and will indemnify and hold the Authority harmless against any such claims.
23. It shall be the responsibility of the Operator to obtain insurance policy of adequate value in respect of his workmen to be engaged for the work towards meeting the liability of compensation arising out of injury/disablement at work.
24. If at any time during performance of the License, the Operator's employees are found to be guilty of misbehavior/misconduct with any member of the public visiting the Gaming Zone or Authority's authorized representative, or to be incompetent or negligent in performing his/their duties or if in the opinion of the Authority, it is undesirable for such persons to be employed by the Operator in the work at Gaming Zone, the Operator, if so directed by Authority or his authorized representative shall forthwith remove such persons(s) from the work immediately.

25. Operator shall keep the Authority indemnified and harmless from and against all personal/customers/visitors/participants and third party claims whatsoever arising out of any act, of omission or commission on part of any of the employees of the Operator, whether committed, omitted or arising within or without the scope of the License, as the case be.
26. It shall be responsibility of Operator to get all the Gaming equipment insured against theft, fire, flood, terrorist act and natural calamities.
27. In order that repeat customers are generated for the Gaming Zone, the Operator would also be required to upgrade it's activities from time to time. Various activities of Gaming Zone should be changed every year. This will retain the imaginative interest of uses.
28. In case of any unforeseen circumstances and Govt. directive the licensee would be required to suspend the operation of Gaming Zone at FCS Warehouse without any claim or compensation from the Authority.
29. The Operator would be responsible for keeping a proper medical kit at site in order to meet any medical emergency. In case of any serious mishap/injury, it would be the responsibility of the Operator to take the injured person to the nearest hospital at its own cost and meet all the medical expenses. The Authority will be completely protected and indemnified from any legal or VICATIOUS responsibility of any minor or major or grievous injury to any uses in Gaming Zone premises. The Authority shall in no event be liable or responsible for damage or injury to any person. And the Authority shall be indemnified and saved harmless against claims for damage or injury in such case.
30. The Operator would put up a board prominently indicating the charges for various Gaming activities provided at FCS Warehouse. The Operator has to put up a board in which do's & don'ts are mentioned.
31. Operator shall ensure that all the activities made available for Gaming Zone should meet the safety precaution and are operated by fully trained and adequately experienced staffs, who are medically fit and free from any infectious diseases.
32. Fire safety equipment's in and around the activity area with fire, electrical safety audit certificate. The successful bidder will take all legal permissions or clearances for conducting the event. Fire brigade, Ambulance, First Aid medical facilities with physician. The Authority may assist the Operator.

## 2.4. Commercial Consideration

- 2.4.1. Quarterly Payment to the Authority: The Operator shall pay to the Authority in quarterly Installments;

**License Fee** To be quoted as bid variable by the Bidder.

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 Open gaming zone for Public;
- b. A date 180 days from the Appointed Date.

2.4.2. All Payments to the Authority shall be made by the Operator .

- 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.

In case of delay/default in license fee/any other payable to Authority, interest @18% p.a. will be charged from the Operator, by the Authority for delay period.

2.4.3. **Performance Guarantee:** The Selected Bidder shall deposit with the Authority upon signing of the Agreement, Performance Security of Equivalent to the Annual License Fee quoted by the bidder in the form of a FDR / Demand Draft valid till 180 days from expiry of project tenure.

## 2.5. Prohibited Activities in Gaming Zone

Prohibited activities at Development and operation of Gaming Zone in Diu

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

### 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. 5,000/- (Rupees Five 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. The Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department or start-ups as recognized by Department of Industrial Policy and Promotion (DIPP) are exempted from the Cost of RFP Document.
- 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. Bid Security/EMD/Proposal Security of Rs. 5,00,000/-(Rupees Five 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. The Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department or start-ups as recognized by Department of Industrial Policy and Promotion (DIPP) are exempted from submission of Bid Security.
- VII. Selected bidder must submit a FDR / Demand Draft of Equivalent to the Annual License Fee quoted by the bidder valid for period of 7 year from Agreement date. The selected bidder must

also agree to extent duration of validity of performance security in mutual agreement with the Authority.

- VIII. Performance security shall be submitted in the form of FDR from the Scheduled Bank having branch at Diu.
- IX. During the bidding stage, Bidders are entitled to examine the FCS Warehouse (**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 Development of the Property.
- X. 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>15-07-2020</b>                               |
| 2       | Last date for receiving queries                              | <b>22-07-2020 up to 16:00 hrs.</b>              |
| 3       | Pre-Bid Conference   | <b>23-07-2020 from 11:00 hrs. To 12:00 hrs.</b> |
| 4       | Bid Due Date (Submission of Technical Bid online)            | <b>05-08-2020 up to 16:00 hrs.</b>              |
| 5       | Opening date and time of technical e-bids                    | <b>13-08-2020 at 11:00 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: 24-07-2020

Time:-11:00 Hrs. to 12:00 Hrs.

Venue: - Conference Hall, Diu Municipal Council, Fort Road, Diu  
CEO, 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:

| Sl. No | RFP Document<br>Page No. | Existing<br>Provision | Clarification<br>required | Suggested<br>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 Development 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 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 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 Agreement. In the event any such advisor is engaged by the Selected Bidder or Operator, as the case may be, after issue of the LOA or execution of the Agreement.

- 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 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 Agreement, as the case may be, shall be liable to be terminated without DSCL being liable in any manner whatsoever to the Selected Bidder 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 should be a proprietorship / Partnership firm / Company or Consortium. Incorporation/registration certificate should be furnished as documentary proof.

### 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 5.3.1 below;

And the technical eligibility criteria set out in Clause 5.2.1 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 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 DSCL and prior to the execution of the Agreement. The SPV would enter into an Agreement and subsequently carry out all the responsibilities of the Operator and undertake the Development and Operation of the Property as stipulated in the 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 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 Development and Operation of the Property in accordance with the terms of the 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 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. Technical Eligibility Criteria:**

### **5.2.1. Eligibility Criteria**

Bidder should have experience in Last 7 financial year in any of the following category:

#### **Category:-1**

Owners/Operators of Gaming Zone/ Amusement Park/Theme Park/Adventure sports/ Water Sports/ Fair/Exhibition Organizer having investment not less than Rs. 2.00 crore in a single project or Rs. 1.30 Crore in two project each and Rs 1.00 Crore in three project each for which experience is being claimed and who has prior experience in Development of such facilities. The bidder should mandatorily provide investment certificate from chartered accountant and certificate from a chartered Engineer or registered valuer.

Or

#### **Category:-2**

Bidder should have minimum 3 years' experience in operating Gaming Zone/ Amusement Park/Theme Park/Adventure sports/ Water Sports/ Fair/Exhibition Organizer in last 7 financial years.

Or

**Category:-3**

Owners/Operators of Hospitality Industry/ Entertainment industry having investment not less than Rs. 2.00 crore in a single project or Rs. 1.30 Crore in two project each and Rs 1.00 Crore in three project each for which experience is being claimed. The bidder should mandatorily provide investment certificate from chartered accountant and certificate from a chartered Engineer or registered valuer.

Hospitality/Entertainment/Tourism Industry means:

1. Hotel
2. Food and beverage establishment
3. Entertainment such as movies/theatre/sports
4. Tourism related project
5. Tourist Information Centre
6. Tours & Travel agency

**5.2.2. 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.

**5.2.3. Acknowledgement by 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 5.2.2 above;
- d. satisfied itself about all matters, things and information including matters referred to in Clause 5.2.2 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 5.2.2 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 Agreement by the 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
- 5.2.4. 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.

### **5.3. Financial Eligibility criteria**

- 5.3.1. The Bidder should have minimum Average Annual Turnover of INR 80,00,000 (Indian Rupees Eighty Lakhs only) during last three financial year ending 31st March of previous financial year.

All In case of a Consortium, the Average Annual Turnover as specified above shall either be satisfied:

- a. by the Lead Member of the Consortium;
  - b. jointly by all the members of the Consortium in proportion to their respective shareholding in the SPV as contemplated in Clause 5.3.1 below;
  - c. And the technical eligibility criteria set out in Clause 5.2.1 below must be satisfied by any one member of the Consortium.
- 5.3.2. 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., 2018-19, 2017-18, and 2016-17.

## 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 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 Operator either by issue of the LOA or entering into of the 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 Operator, as the case may be, without DSCL being liable in any manner whatsoever to the Selected Bidder or 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 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 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. 5,000/-
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

| <b>PART A: FORMAT FOR SUBMISSION OF BID</b>        |  |  |
|--|--|--|
| 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  | Statement of Legal Capacity  |
| 6  | Appendix – A6  | affidavit certifying that the operator or any member of the consortium, or its directors are not blacklisted |
| <b>PART B: FORMAT FOR TECHNICAL BID SUBMISSION</b> |  |  |
| 7  | Appendix B1  | Particulars of the Bidder  |
| 8  | Appendix B2  | Financial Capacity of the Bidder   |
| 9  | Appendix B3  | Particulars of O&M.  |
| 10   | Appendix B4  | Self-Certification Affidavit   |
| <b>ADDITIONAL DOCUMENTS</b>                        |  |  |
| 11   | <b>RFP Processing Fee:</b> Document evidencing payment of INR 5,000 (Indian Rupees Five Thousand only) in favor of the DSCL payable at Diu towards RFP Processing Fee. |  |
| 12   | <b>Bid Security:</b> Document evidencing payment of INR 5,00,000 (Indian Rupee Five Lakh only) in favor of Chief Executive Officer, DSCL, Diu.                         |  |
| 13   | Letter in terms of Clause 5.1.9 of this RFP Document.  |  |
| 14   | Letter(s) in terms of Clause 5.1.4 of this RFP Document.   |  |
| 15   | Copies of Bidder's duly audited annual accounts along with annual reports for the preceding 3 (three) years.   |  |
| 16   | Copy of Memorandum and Articles of Association of the Bidder and in case of a Consortium, of all the Consortium members (if applicable).                               |  |
| 17   | PAN No, GST Registration certificate   |  |
| 18   | 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 development a Gaming Zone at 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 as per clause 1.3 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:

**"Development of Gaming Zone at FCS Warehouse" 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:

Chief Executive Officer  
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. 5.00 Lakh (Rupees Five Lakh only), in favor of the Diu Smart city Ltd (DSCL). The Micro and Small Enterprises (MSEs) as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) or are registered with the Central Purchase Organization or the concerned Ministry or Department or start-ups as recognized by Department of Industrial Policy and Promotion (DIPP) are exempted from submission of Bid Security.
- 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 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 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 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, and Part-B;
  - 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   | Marks |
|--------|--|-------|
| 1      | <p>Owners/Operators of Gaming Zone/ Amusement Park/Theme Park/Adventure sports/ Water Sports/ Fair/Exhibition Organizer having at least 3 year of experience in last 7 financial years.</p> <p>Three years: 10 marks<br/>Above three years up to 2.5 marks for every year experience maximum up to 20 marks</p> <p>Or</p> <p>Owners/Operators of Gaming Zone/ Amusement Park/Theme Park/Adventure sports/ Water Sports/ Fair/Exhibition Organizer having investment:<br/>Rs 2 Crore: 10 Marks<br/>Above Rs. 2 crore up to 2 marks for every rs. 1.00 Crore maximum up to 20 marks</p> <p>Or</p> <p>Owners/Operators of Hospitality Industry/ Entertainment industry having investment:<br/>Rs 2 Crore: 10 Marks<br/>Above Rs. 2 crore up to 2 marks for every rs. 2.00 Crore maximum up to 20 marks<br/>(We will consider for marking only in single category)</p> | 20    |
| 2      | <p>Minimum Average Annual Turnover in last 3 Financial year (2016-17, 2017-18 and 2018-19)</p> <p>Rs. Minimum 80 Lakh: 10 marks<br/>Above Rs. 80 Lakh up to 2 marks for every rs. 50.00 Lakh maximum up to 20 marks</p>  | 20    |
| 3      | <p>Net Worth of Company</p> <p>Rs. Up to 50 Lakh: 10 marks<br/>Above Rs. 50 Lakh up to 2 marks for every rs. 50.00 Lakh maximum up to 20 marks</p>   | 20    |
| 4      | <p>Marks for Technical Proposal and Presentation</p> <ol style="list-style-type: none"><li>1. Concept, theme and design</li><li>2. Planning of the Gaming activities</li></ol>   | 40    |

|  |  |  |
|--|--|--|
|  | <ol style="list-style-type: none"> <li>3. Site planning for activities</li> <li>4. Branding at the event site</li> <li>5. Walk through of the event through graphics</li> <li>6. Best use of eco-friendly practices</li> <li>7. Quality of the products, machines, equipment's and material to be used during the activities.</li> <li>8. Value additions to the Activities</li> <li>9. Credentials of team</li> <li>10. Any other relevant details</li> </ol> |  |
|--|--|--|

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 License Fee may be declared the successful bidder subject to meeting all other conditions mentioned in the RFP. The minimum reserved as an Annual License fee is Rs.24,00,000/- (Rupees twenty four Lakh ) Per Annum.

In the event that two or more Bidders quote the same License Fee, DSCL 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 Annual License fee 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.

### 8.4. Termination of License Agreement

The Selected Bidder shall be required to comply with all provisions of the RFP at all times. Noncompliance to provisions of the License Agreement, including non-submission of Performance Security before signing of Concession Agreement, shall be considered as event of Selected Bidder / Licenses default and result in termination of License Agreement and forfeiture of Bid Security thereof.

## 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 Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, DSCL may reject a Bid, withdraw the LOA, or DSCL may terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or 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 Agreement, or otherwise.
- 9.2 Without prejudice to the rights of DSCL under Clause 9.1 hereinabove and the rights and remedies which DSCL may have under the LOA or the Agreement, or otherwise if a Bidder or 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 Agreement, such Bidder or 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 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 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 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 Diu Smart City, 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 Chief Executive officer, Diu Smart City 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 client, 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 client, 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 and client.
- 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 Property or any part thereof in India, the Selected Bidder shall act expeditiously to extinguish such claim. If the Selected Bidder fails to comply and client 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 7 (Seven) 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: “Development of Gaming Zone at FCS warehouse”**

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 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 Operator for the Development of the aforesaid Property as a Gaming Zone.
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:
  - a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by DSCL; and

---

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

- 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 Annual Turnover 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 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 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 Agreement.
18. I /We hereby confirm that we shall comply with the Development of a Gaming Zone 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 an 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 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. 5,00,000 (Rupees Five 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. The amount has been quoted by me/ after taking into consideration all the terms and conditions stated in the RFP, our own estimates of costs and after a careful assessment of the identified locations of the proposed Gaming Zone and all the conditions that may affect the Bid.
26. I/ We certify that in terms of the RFP, my/our Average Annual Turnover is Rs. ....  
(Rupees .....) in Last three year;
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 Operator under the Agreement till occurrence of financial close in accordance with the 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 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 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

---

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

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

*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 ..... FCS Warehouse Development as a Gaming Zone (the “**Project**”).

Whereas, ..... and ..... (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project 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 Project 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 Project and/ or upon award thereof till the 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 “**Development of Gaming Zone at FCS warehouse**”
- (B) The Parties are interested in jointly bidding for the Project 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 Project, 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 Project.
- 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 Project, 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 Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into an Agreement with the Authority and for performing all its obligations as the Operator in terms of the Agreement for the Project.

## **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 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 Agreement, till such time as the financial close for the Project is achieved under and in accordance with the 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 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 Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium does not get selected for award of the Project, 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: 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- A6: 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. Details 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. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  
- (b) 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> |
|--------|----------------|-------------------|---|
| 1      |                |                   |   |
| 2      |                |                   |   |
| 3      |                |                   |   |

<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

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 Project?   |     |    |
| 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: Format for Financial Summary**

| Sr. No. | Description                        | Financial Data for latest Last 3 Years (Indian Rupees) |        |        |
|---------|------------------------------------|--|--------|--------|
|         |                                    | Year 1   | Year 2 | Year 3 |
| 1       | <b>Total Assets</b>                |  |        |        |
| 2       | <b>Current Assets</b>              |  |        |        |
| 3       | <b>Total External Liabilities</b>  |  |        |        |
| 4       | <b>Current Liabilities</b>         |  |        |        |
| 5       | <b>Annual Profits Before Taxes</b> |  |        |        |
| 6       | <b>Annual Profits After Taxes</b>  |  |        |        |
| 7       | <b>Net Worth [ = 1 - 3]</b>        |  |        |        |
| 8       | <b>Working Capital [=2 - 4]</b>    |  |        |        |
| 9       | <b>Return on Equity</b>            |  |        |        |
| 10      | <b>Annual turnover</b>             |  |        |        |
| 11      | <b>Gross Annual turnover</b>       |  |        |        |

This is to certify that \_\_\_\_\_ (name of the bidder) has Annual Turnover and Net Worth as shown above against the respective/s financial year/s.

Signature \_\_\_\_\_

Name of the Statutory Auditor \_\_\_\_\_

Membership no \_\_\_\_\_

Designation \_\_\_\_\_

Name of the Audit Firm \_\_\_\_\_

FRN \_\_\_\_\_

(Seal of the firm)

DATE \_\_\_\_\_

Note:

1. Year 1 will be the latest completed financial year, preceding the Bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
2. The Bidder shall submit audited annual reports (financial statements: balance sheets, profit and loss account, notes to accounts etc.) in support of the financial data duly certified by statutory auditor/s. In case, company does not have statutory auditor/s, it shall be certified by the chartered accountant that ordinarily audits the annual financials of the company.
3. Certificate(s) from the statutory auditors specifying the Average Annual Turnover of the Bidder, as at March 31, 2019.

### APPENDIX-B3: Particulars of the Project Experience

1. Details 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. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  
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 Project Experience:

| Sr. No. | Name of Project | Name Client/Owner | Location | Type of Construction :<br>Theme Park/<br>Commercial/ Shopping<br>Mall | Project Cost<br>(Rs. in Crore) | Completion Date |
|---------|-----------------|-------------------|----------|---|--------------------------------|-----------------|
|         |                 |                   |          |   |                                |                 |
|         |                 |                   |          |   |                                |                 |
|         |                 |                   |          |   |                                |                 |
|         |                 |                   |          |   |                                |                 |

Signature \_\_\_\_\_

Name \_\_\_\_\_

Designation \_\_\_\_\_

Company \_\_\_\_\_

Date \_\_\_\_\_

Notes:

1. The claimed experience shall be supported by documentary evidence i.e. completion Certificates, commissioning certificates, etc., duly attested by Architect.

**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.

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,

.....

Dear Sir,

1. We are pleased to quote an Annual License fee \_\_\_\_\_ (Rs in Words) for first year of operation starting from Commercial Operation Date (COD). (Minimum Reserve License Fee is Rs 24,00,000/- Twenty Four Lakh Only)

Note: The Annual License fee shall be escalated at the rate of 5% compounded every years, over the previous year Annual License Fee paid by the Operator.

2. We confirm and agree that we have reviewed all the terms and conditions of the Request for Proposal and confirm that we would abide by all the terms and conditions. We hereby declare that there shall be no deviations from the stated terms in the RFP.
3. I/ we agree that my/our Financial Proposal shall remain valid for a period of 180 (one hundred and eighty) days from the Proposal Due Date prescribed for submission of Proposal.
4. I / we confirm that our Financial Proposal is unconditional and that we accept all terms and conditions specified in the RFP.
5. I / we agree to be bound by this offer if we are the Selected Bidder for the said Assignment.
6. We further certify that we shall follow the Scope of Work/services, without any deviations, enumerated in this RFP, if the assignment is awarded to us.

Sincerely,

Name of the Bidder .....

Signature of the Authorized Person .....

Name of the Authorized Person

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

In order to tap the existing potential of tourism in the Diu, it is proposed to develop a Gaming zone in the Food & Civil Supply warehouse near Bandar Chowk on Fort Road. The intent of the project is to develop, install & operate a Gaming Zone for the families with small children to teenagers to all age group in the city and tourist visited to Diu. This zone will offer experience of adventure/entertainment based activities with a refreshments area cafeteria & souvenir shop as a complete day package.

### **Scope of Work:-**

The Project envisages the following scope of work;

- a) To prepare the comprehensive concept plan and design for the proposed gaming zone and getting them approved from the authority or their authorized. Local bodies and other agencies.
- b) To develop/construct the gaming zone by creating below Indicative listed of activities;
  1. Bowling Alley
  2. Mechanical Bull Ride
  3. Indoor Rock Climbing
  4. Arcade Video Games
  5. Virtual Reality Games
  6. Interactive Projector Based Game
  7. Basket Ball
  8. Ice Hockey
  9. King of Hammer
  10. Indoor Cricket
  11. Kids Zone with small activities for kids such as battery operated cars, bouncing alleys etc.

(Above list of activities is indicative only bidder can proposed other games also which is approved by authority)

- c) The Licensee can construct restaurant and souvenir shop in 20% (Maximum) of allotted Space.
- d) The Civil work and gaming equipment installation work to be completed within six months.
- e) To operate/run the Project at all time during the License Period.
- f) To collect revenues during operation period including fee from the users of the gaming zone and any other charges for amenities provided under the Project as approved by DSCL/DMC.
- g) Pay in advance the License fee every quarter to the Authority during License period.
- h) The bidder shall bear/pay all applicable taxes, fees, rates and duties.



Note: All the above mentioned activities can be enjoyed by the tourists/ citizen on chargeable basis. The Operator will levy charges directly from them. All permissions and safety measures to be taken by the operator only. Rates of the activities should be as per norms, universal as per applicable rates. Any other activity can be organized subject to approval from The Authority.

All other infrastructure support like ticketing counter, power supply, and various permissions shall be arranged by selected bidder. However, administrative support to get approvals etc shall be provided by the authority. Any activity/activities requiring permanent set up or infrastructure shall not be permitted under this tender.

Check-In Counters: Reception area for activity zone. Completely branded with details of the activities and small pamphlets for activity info, rates etc.

Activities With all high standard safety and security measures for overall operation of the activity allocating appropriate skilled manpower for operating and maintaining the activity, Ticket Counters etc.

### **License Period**

The Project is proposed to be given to bidder for setting up and operating the Gaming zone facilities thereon for a fixed period of 5 Years (Extendable by 2 more years 1 year at a time) from the date of Agreement.

Bidder would be responsible for designing, financing, constructing, operating & maintaining the facility for the entire License period (i.e. 5 Years).

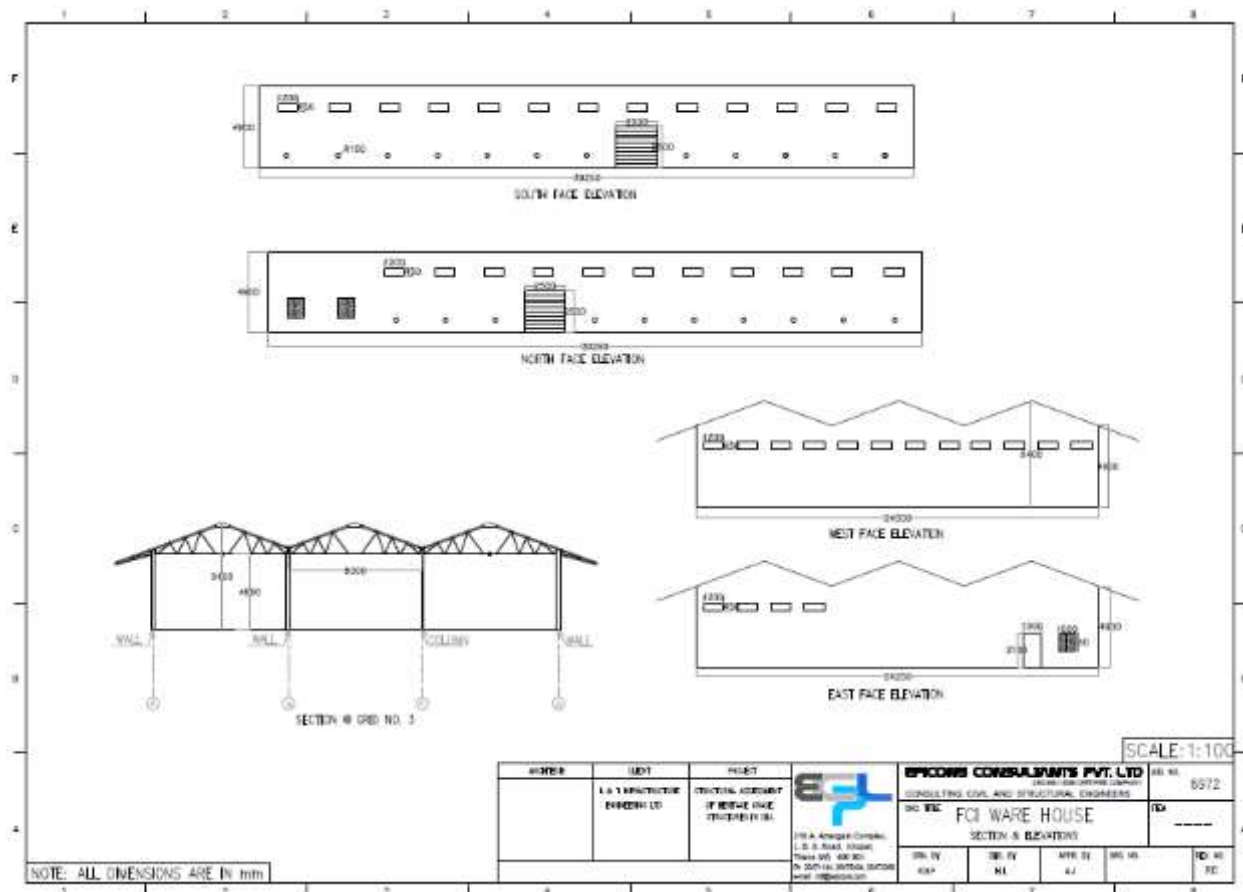
### **Site Location**

The Project site 'GAME ZONE' is situated on Fort road near Bandar chowk, which is one of the prime area of Diu. This place has been selected because it is situated adjacent to fort road promenade which is the main thoroughfare of Diu. All the visitors and citizen of Diu use this road, making the game zone prominently conspicuous.

### **Proposed Location for Gaming Zone**



## Existing Layout of the Site



## Characteristics of site

The proposed site for gaming zone is a warehouse structure admeasuring 39.25 m x 24.5 m, currently utilized by Food & Civil Supply Department, UT administration Daman & Diu. The structure provides an appropriate floor space required for a gaming zone.

|   |                               |
|---|-------------------------------|
| Size of FCS Warehouse   | 39.25 M X 24.5 M = 961.62 SQM |
| Space Retained by Diu Administration for Proposed Tourism Purpose | 16 M X 6 M = 96 SQM           |
| Space available for Gaming Zone                                   | 865.62 SQM                    |

Below Layout Showing Space available for Gaming Zone.



Photos of the FCS Warehouse:







# DRAFT LICENSE AGREEMENT

## Development of Gaming Zone at FCS Warehouse

### Volume II



Tender No. 05/2020-21/DSCL-Diu

**DIU SMART CITY LTD**  
**C/O DIU MUNICIPAL COUNCIL**  
**FORT ROAD, DIU - 362520**

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

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**Development of Gaming Zone at FCS Warehouse**

**At**

**Diu Port, Diu**

**(Draft License Agreement)**

**Name and address of the Licensee:**

**Diu Smart City Ltd.  
C/o Diu Municipal Council  
Fort Road, Diu, 362520**

# 1 Draft License Agreement

Agreement No. \_\_\_\_\_ of Year 20\_\_

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

AND

\_\_\_\_\_, having its registered office at \_\_\_\_\_

\_\_\_\_\_ and represented by (PROPREITOR/ COMPANY/ CONSORTIUM) \_\_\_\_\_, hereinafter called “Licensee” (which expression shall unless repugnant to the context or meaning thereof include the successors and assigns) of the Second party.

WHEREAS

- (a) Diu Smart City Ltd, (DSCL) is a Special Purpose Vehicle (SPV) for Implementing Diu Smart city Ltd. Which is formed by (UT Administration Daman and Diu & Diu Municipal council) had invited open bid on behalf of UT Administration of Daman and Diu On \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ for licensing for Development of Gaming Zone at FCS Warehouse, Fort Road, Diu from the interested parties. Based on Request for Proposal received from Bidders, successful bidder \_\_\_\_\_ (Name of Licensee/successful bidder) has been selected for assigning licensing rights of Development of Gaming Zone with licensed area \_\_\_\_\_ sqft, on Fort Road, Diu on “as is where is basis” to the “Licensee”.
- (b) Licensor has agreed to provide to the Licensee, for Development of Gaming Zone at FCS Warehouse, the Licensing rights of licensed space of Development of Gaming Zone at FCS Warehouse (as defined in APPENDIX – I of the agreement) on “as is where is basis”, herein after referred to as “**Gaming Zone**”, on payment of License Fee along with applicable taxes and Performance Security and other charges to Licensor on the terms and conditions hereunder contained in this License Agreement.
- (c) Licensee shall Finance, Develop, manage, operate, maintain and vacate the licensed space allotted to them at FCS warehouse, Fort Road, Diu, UT Administration of Dadar and Nagar Haveli and Daman and Diu as specified in this Agreement at its own cost.

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

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

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

The Licensee hereby covenants as follows: -

- i. Licensee hereby assumes responsibility for licensed space of Gaming Zone (as defined in APPENDIX – I of the agreement) at FCS Warehouse, Fort Road, Diu, UT Administration of Dadar and Nagar Haveli and Daman and Diu. Licensee shall be responsible to Finance, Develop, manage, operate, maintain and vacate Licensed Space as specified in this Agreement at its own cost. All the alterations, installations, Operations, and games proposed by by the Licensee are subject to approval by the Licensor with regard to operational feasibility, aesthetics, and safety and security concerns.
- ii. Licensee irrevocably agrees to make all payments including license fee, and other amounts due to the Licensor as per this Agreement as and when due, without delay or demur, without waiting for any formal advice from The Licensor in this regard.
- iii. The Licensee confirms having examined the potential location of the Licensed Space allocated in FCS warehouse, Fort Road, Diu in detail and fully understands and comprehends the technical and operational requirements of the Development of Gaming Zone. The Licensee also confirms full satisfaction as to the business viability of the licensed space allocated in FCS Warehouse, fort road, Diu and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account. Licensee also confirms having made independent assessment of present and future market potential and no future claim what so ever regarding change in market circumstances shall be used by it as an alibi or excuse for non-payment of license fee and other amounts due to the Licensee under this License Agreement.

B. That The Licensor and Licensee represent and warrant that they are empowered, authorized and able to make this agreement.

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

|   |   |
|---|---|
| <p>...../...../20....</p> <p>(.....)</p> <p>Authorized Signatory</p> <p>FOR AND ON BEHALF OF LICENSOR</p> | <p>...../...../20....</p> <p>(.....)</p> <p>Authorized Signatory</p> <p>FOR AND ON BEHALF OF LICENSEE</p> |
|---|---|

In Witness whereof the LICENSEE and the LICENSOR have set their hands hereunto on the day, month and year first written above in the presence of the following witnesses:

|                   |                   |
|-------------------|-------------------|
| <hr/><br>LICENSOR | <hr/><br>LICENSEE |
|-------------------|-------------------|

## 2 Definitions and Interpretations

### 2.1 Definitions

- (a) "Agreement" means the License Agreement to be executed between the Licensor and the Selected Bidder in the format approved by The Licensor and includes any amendments, annexure hereto made in accordance with the provisions hereof.
- (b) "Applicable Laws" means all laws, brought into force and effect by Govt. of India, State Governments, local bodies and statutory agencies and rules/ regulations/ notifications issued by them from time to time. It also includes judgments, decrees, injunctions, writs and orders of any court or judicial authority as may be in force and effected from time to time.
- (c) "Permits" shall mean and include all applicable statutory, environmental or regulatory licenses, authorization, permits, consents, approvals, sanctions, registrations and franchises from concerned authorities.
- (d) "Applicable Permits" or "Approvals" means all clearances, licenses, permits, authorizations, no objection certificates, consents, sanctions, approvals and exemptions required to be obtained or maintained under Applicable Law, in connection with the "Development of Gaming Zone at FCS Warehouse" during the subsistence of this Agreement.
- (e) "As is where is basis" means Licensee shall be Licensed the FCS warehouse, on Fort road, Diu will be made available on 'as is where is basis' and the Licensee shall at his own cost, charges and expenses may do temporary modifications with the prior approval of DSCL / applicable authority. No modifications/ improvement of permanent nature is allowed without prior approval from Authority. Licensee shall not be entitled to any compensation for any additions carried out by them in the licensed space.
- (f) "Bid" means the documents in their entirety comprised in the RFP, including all clarifications, addenda and revisions issued by the Licensor to the Bidders, the Proposal submitted by the successful Bidder (Licensee) in response to the Request for Proposal in accordance with the provisions thereof.
- (g) "Bidder" means any entity which is a registered sole proprietorship firm, a partnership firm or a company having registered office in India, or a combination of above in the form of consortium etc.
- (h) "Earnest Money Deposit" or "Security Deposit" means the refundable amount submitted by the interested applicant along with the Bid to the Licensor.
- (i) "Change in Law" means the occurrence or coming into force of any of the following after the date of signing this Agreement:
  - a) The enactment of any new Indian law
  - b) The repeal, modification or re-enactment of any existing Indian law
  - c) Any change in the rate of any Tax

Provided that Change in Law shall not include:

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

the Concession Period.

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

## 2.2 Interpretations

2.2.1 In this Agreement, unless the context otherwise requires,

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

to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

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



Agreement or of the Schedule in which such reference appears; and

- (s) the damages payable by either Party to the other Party, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).
- (t) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires any reference to Operate/Operations shall mean Operate and Operations & Maintenance unless the context otherwise requires

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

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

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

### 2.3 Measurements and Arithmetic Conventions

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

### 2.4 Priority of Agreements and Errors/Discrepancies

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

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

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

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

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

- b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail; between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and between any value written in numerals and that in words, the latter shall prevail.

### 3 Grant of License

3.1 The License to Development of Gaming Zone at FCS Warehouse, Fort Road, Diu has been offered to the Licensee, as detailed in Appendix-I.

#### **APPLICABLE RESERVATIONS**

3.2 The license has been granted to the Licensee with following reservations:  
a) Development of Gaming Zone (excluding prohibited activities detailed in Appendix-II):  
b) Can develop Restaurant & Souvenir Shop in 20% (Maximum) of allotted Space.

#### **LICENSE COMMENCEMENT AND TENURE**

3.3 The License period shall be granted for 5 Years (Extendable by 2 more years 1 year at a time) term from commencement date.

3.4 After completion of Five (5) years of License or upon termination, the Licensee shall not reserve any rights to the allotted licensed space. The Licensor shall have right to call for fresh proposal for the Licensed space.

3.5 The Licensee will have an option to terminate or Exit from the License Agreement with a notice period of three (3) months and forfeiture of the performance guarantee as below.

- Exit within 1 years of license – forfeiture of 25% of Performance Guarantee

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

3.6 The Licensee shall remove the Gaming Equipment on the expiry of license period or on termination of the license at his own cost and vacate the designated location.

3.7 In case of breach of License Agreement or if the Licensee is desirous of terminating the License without serving any intimation/notice period or shorter intimation/notice period than 3 months, the agreement shall have deemed to be terminated on completion of such improper intimation period. In such cases, license fee paid if any and performance security paid by the licensee shall be forfeited. Balance outstanding dues, if are more than performance security, shall be also recoverable from the Licensee before Licensee is permitted to remove their establishment(s) or else Licensor will seize their property treating as “Zero” or “Nil” value. Licensor shall be free to dispose of the said property/goods in whatsoever manner it deems fit. Licensee shall have no claim for compensation of consideration/ damages in this regard.

## LICENSE FEE

- 3.8 The FCS warehouse shall be handed over to Licensee on \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_. The License fee for Development of Gaming Zone at FCS Warehouse, bearing Identification No. \_\_\_\_\_ shall commence w.e.f. \_\_\_\_\_ considering 6 (Six) month for Development period for financing/ Develop / preparation/ renovation of licensed space and shall be charged till the termination/ completion of agreement.
- 3.9 The Licensee agrees voluntarily and unequivocally to make all payments to Licensor as may be due before the due date, without waiting for any formal advice from Licensor.
- 3.10 The yearly license fee of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) plus GST/Taxes as applicable shall be paid to Licensor on Quarterly basis within 15 days from the last day of any installment period. The accepted rate is Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_only) per year as shown in the letter of acceptance issued to \_\_\_\_\_vide letter no. \_\_\_\_\_ dated \_\_\_\_\_ duly accepted by the Licensee.  
The Licensee also irrevocably agrees that an escalation of 5% per year over the License Fee paid for the immediately preceding year shall be applicable and shall be paid by the Licensee as per the provisions of this Agreement.
- 3.11 The licensee shall make payment through Demand Draft/Banker's Cheque/RTGS/NEFT to the bank account as per bank details provided in the Lol after obtaining prior approval of Licensor as per the prescribed format.
- 3.12 Licensee shall periodically advise the details of payment deposited with Licensor.
- 3.13 Non-payment of License Fee and other dues within the prescribed date shall constitute Material Breach of Contract and Licensee's Event of Default under this Agreement and shall entitle Licensor to terminate the License Agreement as per provisions stipulated in Article-8 of the License Agreement. Besides, the licensee shall pay an interest of 18% (Eighteen percent) per annum on the amount of license fee and other dues outstanding after the due date and falling in arrears. Interest shall continue to accrue on monthly compounding basis till all the payable amount of license fee and other dues are finally squared up. Such interest shall be charged on outstanding dues for the actual day(s) of delay in payment.

- 3.14 In case payment is not made by due date, 15 days' notice to cure the Licensee's Event of Default shall be issued. In the event of licensee failing to cure the Default, Licensor shall be entitled to terminate the license after issuing 15 days' termination notice and shall be free to forfeit performance security after adjustment of all dues payable by the licensee what so ever and take such other action available to it under this Agreement and as per Law.
- 3.15 The licensee shall vacate Licensed Space by taking away all his articles and hand over vacant space to Licensor on or before the 15 days period from date of issue of termination notice otherwise Licensor shall take over the possession of the property goods and all the belongings/ inventory/ property/installations/ fittings/furniture/goods etc. shall be vested with Licensor at Zero/Nil value. Further Licensor shall be free to dispose of these goods by any procedure as deemed fits manner. The Licensee hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration thereafter in future.
- 3.16 The Licensee shall vacate the premises within 15 days of termination of the License Agreement. A certificate from Licensor or its authorized representative in proof of licensee having vacated the site shall be required to be submitted by the Licensee. Any claim of vacation/ non-vacation without the endorsement of Licensor or its authorized representative shall not be entertained.

### **Performance Security**

- 3.17 Licensee shall pay performance security to Licensor Equivalent to the Annual License fee quoted by the bidder as Security Deposit. The performance security shall be accepted through Demand Draft/FDR /RTGS/NEFT to the bank account as per bank details provided in the Lol. Security Deposit should remain valid for a period of One hundred and eighty (180) days beyond the date of expiry of License period.
- 3.18 Performance Security shall be refunded after successful completion of the full term of the License period or on surrender of the licensed space as provided above in para 3.4 in case the licensee opts to exit from the contract before full term.
- 3.19 Performance Security shall be refunded in case Licensee exists from the License Agreement after successful completion of License Period subject to conditions in para 3.5.
- 3.20 In case of death of licensee, legal heir shall be responsible for the Licensed space. On expiry of the License the unadjusted balance of Performance Security and advance deposits shall be returned / refunded to the legal heir of the licensee after adjustment of dues, if any.
- 3.21 Licensor reserves the right to forfeit Performance Security and all other payments made by Licensee under below conditions:
- a) If the Licensee has abandoned the Licensed space for more than 15 (Fifteen) days without written approval from the Licensor or his/her appointed representative.
  - b) Exiting from license agreement after payment of Performance Security even without taking possession of Licensed Space.

c) In case of any Licensee Event of Default or breach of License Agreement.

3.22 Licensor reserves the right for deduction of Licensor's dues from Performance Security at any stage of agreement i.e. currency/completion/termination/surrender, against -

- a) Any physical damages caused by Licensee or its contractor/sub-contractors/staff and labour employed/ engaged by them to the property of the Licensor
- b) Any amount imposed as a penalty and adjustment for all loses/damages suffered by Licensor for irregularities committed by the Licensee.
- c) Any payment/ fine made under the order/judgment of any court/consumer forum or law enforcing agency or any person working on his behalf.
- d) Any other outstanding payment due to Licensor as per License Agreement.
- e) Any amount which Licensor becomes liable to the Government/Third party due to any default of the Licensee or any of his Employee/ agent.

3.23 Once any amount is debited from the Performance Security, the Licensee shall refurbish the Performance Security to the extent the amount is debited, within 15 days period failing which it shall be treated as Licensee's Event of Default.

#### **TAXES AND OTHER STATUTORY DUES**

3.24 The property tax applicable, if any, on the property of Licensor shall be borne by the Licensor.

3.25 GST and other taxes, as applicable time to time, shall also be borne by Licensee.

3.26 All other statutory taxes, statutory dues, local levies, as applicable shall be charged extra and shall have to be remitted along with the License Fee for onward remittance to the Government. The Licensee shall indemnify Licensor from any claims that may arise from the statutory authorities in connection with this License.

3.27 Payment of all stamp duties for registration of licensed space required to be executed for license agreement shall be borne by Licensee.

#### **DAMAGES FOR DELAY**

In the event of delay in completing the project 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 0.05% (zero point zero five per cent) of the Performance Security for each day's delay until the Completion of project, subject to a maximum of 5% (Five percent) of the Performance Security.

## 4 Develop, Operation and Maintenance of Gaming Zone

### 4.1 Fit-out Works:

- (a) FCS warehouse shall be provided for devolve as a Gaming Zone center as bare space only and the licensee shall carry out fit-out works on its own cost as, per the business requirement within said premises but without in any way damaging main/shell structure or building façade or equipment's installed by the licensor and building infrastructure of the said premises. Licensee shall need to take prior written approval from Licensor through a written notice prior to commencement of any fit-out works and if necessary licensor reserves the right to ask for and review the fit-out plan/drawings before providing consent.
- (b) All the work shall be done at the cost of Licensee complying and strictly following the safety procedure, measurement and fit-out guidelines laid down by the Licensor. If it is noticed at any stage that Licensee is not complied the safety procedure, measurement and guidelines laid down by the Licensor, a penalty shall be imposed on the Licensee as deemed fit by the Licensor.
- (c) The Licensee shall be responsible for the costs of removing debris from the premises and shall be responsible for all damage to the warehouse building during the process of fit-out works. Any special cleaning or drain clearance necessary as a result of the fit-out works and any other costs incurred by Licensor including any extra security costs, which are caused by, or in connection with, the works shall also be charged to the Licensee's account. The Licensee shall have to bear the cost of the damage plus service charges. However before incurring any such costs the Licensee shall be briefed on the requirements to Licensor.

### 4.2 Maintenance & Repairs:

- (a) Licensee shall bear the cost of day-to-day repairs and maintenance including white washing. All major repairs due to constructional defects shall be the responsibility of Licensor. If the major repairs or maintenance required to be carried out by Licensor are not carried out within reasonable time, the Licensee shall have the right to get the needful done with prior written consent of Licensor and deduct the cost thereof from the amount payable to Licensor.
- (b) Licensee shall be at liberty, on termination of this license, to remove/ take movable items, equipment or appliances installed by it leaving licensed premises, on as is where is basis.
- (c) The premise, which has been handed over to the Licensee under this agreement, shall be kept in good condition and maintained properly by the Licensee at their own cost. If the property is not handed over in good condition as required under this agreement, Licensor reserves the right to seek exemplary damages and indemnification.

### 4.3 Operation of Gaming Zone:

- (a) Licensee shall operate and maintain the Gaming Zone during the Agreement Period and adhere to Operation and Maintenance Requirements outlined by the Licensor. In case Licensor finds Licensee failing to meet any Operation and Maintenance Requirements as outlined by the Licensor, Licensor shall give a notice to Licensee stating the fault (the "Fault") and grant time to rectify the same. If Licensor finds the Fault has not been rectified within the time period specified, then Licensor shall have the right to rectify the Fault and recover the

expenses for the same from Licensee. In such case, Licensor shall have the right to encash Performance Security to the extent of expenses incurred in rectification of the fault.

- (b) Licensor shall be required to apply for and obtain clearances as applicable for holding any event in the Licensed Space, including but not limited to permissions from local bodies, police, fire department etc.
- (c) Licensor shall be required to acquire, on his own cost, all applicable permits required to be obtained or maintained by the Licensee under Applicable Laws for the operation of the licensed space during the subsistence of this Agreement.
- (d) The activities as mentioned in APPENDIX-II of this agreement, shall be strictly prohibited in the Licensed Space.
- (e) Licensee shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Licensed Space.
- (f) Licensee shall ensure that fire detection and suppression measures installed inside his premises are kept in good working condition at all times.
- (g) The Licensee voluntarily and unequivocally agrees to provide un-fettered access to the fire officer of Licensor for inspection at any time and agrees voluntarily and unequivocally to abide by and comply with all instructions as may be indicated by the fire officer. Non-compliance may be treated as breach of contract and license shall be terminated.
- (h) Licensee shall ensure that all electrical wiring, power outlets and gadgets are used and maintained properly, for guarding against short circuits/ fires. The instructions in this regard by the Licensor electrical inspector/authorized representative must be complied with. Any cost/s associated with implementation of such instruction shall be borne solely by the Licensee.
- (i) The Licensee voluntarily and unequivocally agrees not to seek any claims, damages, compensations or any other consideration whatsoever on account of implementing the instruction issued by Licensor fire officer, electrical inspector, Security officer or their authorized representatives from time to time.
- (j) Licensee shall keep and maintain the licensed space in neat, clean condition and in safe and sound manner during the license period. Any defective, weak or corroded structure should be replaced immediately with new proper structure. In case of any incident/ injury caused due to error/ omission attributable on the part of Licensee, the Licensee shall be responsible for all compensation.
- (k) Licensee and its employees or other persons involved in the execution of the work shall not in any way impinge on the safety and security of the premises, visitors' convenience, and Licensor's assets.

In case of serious accident caused due to negligence of the Licensee, resulting in injury, death to visitor or Licensor's employees or loss to Licensor's property, it shall constitute Material Breach of Contract and considered Licensee Event of Default that shall entitle Licensor to terminate the License Agreement with 7 days written notice.



- (l) The Licensee shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- (m) The Licensee shall ensure safety and security of Licensed space. Licensor shall not take any responsibility.
- (n) Joint inspection of Licensed Space shall be conducted by Licensor's officials and Licensee, on regular basis as scheduled by said Authorized person. Discrepancy noticed or instructions issued by Licensor shall be rectified/ complied by Licensee within a period of 15 days, failing which Licensor reserves right to impose fine/ penalty as deemed fit by Licensor. Deliberate or willful noncompliance of Licensor written instructions for a period of 30 days shall constitute Material breach and Licensee Event of Default that shall entitle Licensor to encash Performance Security and or terminate License Agreement after giving 15 days notice to the Licensee. Such termination of License Agreement and forfeiture of Performance Security by Licensor after adjustment of all dues what so ever shall be without prejudice to any other damages, rights or remedies applicable under law in its favour.
- (o) The overall control and supervision of the premises shall remain vested with Licensor who shall have the right to inspect the whole or part of the licensed premises as and when considered necessary, with respect to its bonafide use and in connection with fulfillment of the other terms and conditions of the license agreement.
- (p) The Licensee recognizes and acknowledges the fact that the Project is intended to provide a public facility and the Licensee shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Licensee apprehends any detriment to the Facility, it shall seek instructions from the Licensor or its authorized representative, whose decision in this regard shall be final.
- (q) Further, Licensor can impose the fine/penalty on Licensee as deemed fit on the following offenses:
  - i. Licensee staff found in drunken condition/ indulging in bad conduct.
  - ii. Any staff of the Licensee found creating nuisance on duty.
  - iii. Improper maintenance & defacement of the Property.
  - iv. Dishonor of drafts and Cheques given by Licensee in favour of Licensor.
  - v. Misbehavior with staff of Licensor, other occupants and visitors of the premises.
  - vi. Not following safety and security norms as may be indicated by authorized representative of Licensor.
  - vii. Any staff of the Licensee found without ID Card.
  - viii. Not following the instructions issued by Licensor's authorities from time to time
- (r) The option to impose fine, penalty, etc under this License Agreement shall be exercised by Authorized person or by Licensor's authorized representative as per good industry practice.
- (s) On operational ground/ administrative exigency, the Licensor may ask the Licensee to vacate any Licensed Space. Thereupon, the Licensor shall refund the Performance Security after adjusting damages & dues and balance License Fee on prorata basis. The Licensee unequivocally and voluntarily agrees not to seek any claim, compensation or any other consideration on this account on whatsoever reason.

## 5 Rights and Obligations

### 5.1 Licensee's Obligations:

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

- (a) To finance, develop, operate and manage the Gaming Zone as per the granted License.
- (b) to obtain due permits, necessary approvals, licenses, clearances and sanctions from the competent authorities for intended commercial activities or infrastructure facilities including, Solid waste management, firefighting, telecommunication, etc.;
- (c) to discharge its obligations as per the applicable conditions of licenses, proprietary rights, permits, National Building Code, Development Control Rules, and the principles of good industry practice and as a reasonable and prudent person, statutory requirements, laws of the land and any other norms, which are applicable from time to time.
- (d) to operate and maintain the Licensed Space at all times in conformity with this Agreement;
- (e) to bear the cost/ expenditure to be incurred on the commercial operation of the Licensed Space during the entire Agreement Period;
- (f) to make all payments due towards the grant of License in a timely manner, as per the provisions of this Agreement.
- (g) to duly supervise, monitor and control the activities in the Licensed Space, including regulating the use of Licensed Space by third party sub-contractors, if any, appointed by the Licensee;
- (h) to get prior approval of the Licensor in case there is any change/modification in the Licensed Space defined hereof during the Agreement Period.
- (i) to ensure that no structural damage is caused to the existing buildings, Licensor's building infrastructure & other permanent structures of the Licensors' property as a result of his activities or any of its agents, contractors, etc.;
- (j) to ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/ material which on account of their weight or nature may cause damage to the premises. The Licensee shall be liable or responsible for destruction or damage to the premises;
- (k) to ensure compliances of all rules and regulations/notifications issued from time to time by Ministry of Health, Municipal Corporation and/or any appropriate authority in this regard;
- (l) ensure that the operation of the licensed space including but not limited to its branding or naming, commodities and services offered does not negatively affect public sensitivities. In case of default of such nature, Licensor reserve the right to take necessary action as deemed fit.
- (m) to have the right to locate hoardings and advertisement boards, as per the applicable laws after prior approval from Licensor, in the approved location in the Project Facility. The

Licensee will have to follow the colour scheme and design for various hoardings/ display boards as approved by Licensor.

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

5.2 The Licensee shall be solely and primarily responsible to Licensor for observance of all the provisions of this License Agreement on behalf of the Licensee, its employees and representatives and agents and any person acting under or for and on behalf of the Licensee; contractor(s) appointed for the Licensed Space as fully as if they were the acts or defaults of the Licensee, its agents or employees.

5.3 The Licensee shall comply with all rules and regulations notified by Licensor from time to time.

5.4 No tenancy/sub-tenancy is being created by Licensor in favour of Licensee under or in pursuance of this Agreement and it is distinctly & clearly understood, agreed and declared by/ between the parties hereto that:

- (a) The Licensee shall not have or claim any interest in the said Licensed Space/premises as a tenant/sub-tenant or otherwise.
- (b) The rights, which Licensee shall have in relation to the said premises, are only those set out in this Agreement.
- (c) The relationship between Licensor and Licensee under and/or in pursuance of this Agreement is as between Principal and Principal. Consequently, neither party shall be entitled to represent the other and/or make any commitment on behalf of and/or with traders or any other party. Furthermore, no relationship in the nature of Partnership or Association of persons is hereby being created or intended to be created between Licensor on the one hand and Licensee on the other hand in connection with and/or relating business to be operated by Licensee at the said premises.

5.5 Licensee shall not sub-lease, assign any of its rights, or interest in this Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

5.6 Licensee shall be liable and responsible for compliance of all statutory requirements as may be applicable in respect of the operation of the Licensed Space.

5.7 Licensor's Obligations:

DSCL shall provide FCS Warehouse "As is where is basis" for development of gaming zone.

- (a) The Authority shall continue to have all rights and control over the licensed premises as its Authority, subject to the rights of the Operator hereunder including the right to inspect the various services offered by the selected bidder by itself or its Authorized Representatives, officers and Employees.
- (b) The Authority may facilitate (without any obligation) for obtaining licenses from relevant authorities for the operation of the Gaming Zone.

## 6 Indemnity and Insurance

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

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

## 7 Force Majeure

- 7.1 Neither the Licensor nor Licensee shall be liable for any inability to fulfill their commitments and obligations hereunder occasioned in whole or in part by Force Majeure, any of the following events resulting in material adverse effect, shall constitute force majeure events:
- a) Earthquake, Flood, Inundation, Landslide, epidemic.
  - b) Storm, Tempest, Hurricane, Cyclone, Lighting, Thunder or other extreme atmospheric disturbances.
  - c) Fire caused by reasons not attributable to the Licensee or Licensor.
  - d) Acts of terrorism.
  - e) War, hostilities (Whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war.
  - f) Strikes or boycotts, other than those involving the Licensor, its contractors, or their employees, agents etc, and
  - g) Any other similar things beyond the control of the party, except court order/ court judgment.
- 7.2 Occurrence of any Force Majeure shall be notified to the other party within 7 days of such conditions. If any Force Majeure continues for a period of 30 (thirty) days, the party notifying the Force Majeure condition may be entitled to, though not being obliged, to terminate this agreement by giving a notice of one week to the other party and Performance Security shall be refunded by the Licensor to the Licensee after adjusting outstanding dues, if any, payable to the Licensee.

## 8 Breaches/Surrender/Termination of License Agreement

### **Surrender of License Agreement:**

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

In case of breach of this commitment by the licensee, complete performance security deposit by the licensee shall be forfeited.

8.2 Post completion of One (1) year of license term from the commencement date, the Licensee shall have option to surrender the License agreement hereby created, provided that

- a) Licensee may terminate or exit the license agreement by giving advance 3 month notice during the License period, subject to fulfilling all conditions of License agreement;
- b) There is no arrear pending with the Licensee on the date of issue of surrender notice, and
- c) Licensee continues to pay all dues as per schedule to the Licensor till the date of pre-mature closure of License Agreement, and
- d) Licensee shall hand over, vacant and peaceful possession of licensed space, to Licensor, free from all encumbrances and in original condition free of cost within 15 (fifteen) days from closure of License agreement.

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

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

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

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



Licensor.

- f) If the Licensee is in violation of any of the other clauses of License Agreement and after three written notice (unless otherwise specifically mentioned therein) from the Licensor fails to cure the Default to the satisfaction of the Licensor.
- g) If any representation made or warranties given by Licensee under this Agreement is found to be false or misleading.
- h) (If the Licensee engaging or knowingly has allowed any of its employees, agents, or contractors to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- i) If the Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the licensed space, save and except as otherwise expressly permitted under this Agreement.
- j) If a resolution for voluntary winding up has been passed by the shareholders of the Licensee.
- k) If any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Licensor, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Agreement.
- l) If the Licensee has abandoned the Licensed space for more than 15 days without written approval from the Licensor or his/her appointed representative.
- m) If the Licensee is found to be violating the list of prohibited activities as per Appendix-II.

#### **Termination of License Agreement by Licensor:**

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

- 8.6 On operational ground or any other Administrative Exigencies: Licensor reserve the rights to terminate License Agreement by giving 15 (Fifteen) days advance notice in such exigency. License agreement shall stand terminated and Licensee shall be refunded the balance License Fee on prorata basis and balance Performance Security after adjusting outstanding dues, if any. Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard. Licensee shall remove his belongings from Licensor's premises within 15 days of issue of termination letter, failing which these belongings shall become property of Licensor. Licensor shall be free to use/ dispose-off these belongings in whatever manner as deemed fit. Licensee shall have no claim, compensation or consideration on any account of these belongings.
- 8.7 Termination for Force Majeure: The License Agreement may be terminated for Force Majeure Reasons as specified in Article 7.

**Other Conditions:**

- 8.8 After termination/ surrender/ expiry of License period or due to force majeure events, Licensee shall forthwith vacate the said premises and remove movable item, equipment or appliances as well as its personnel from the said premises without causing any damage to the property of the Licensor.
- 8.9 On termination of License Agreement in the Event of Default by Licensee, Licensor shall forfeit Performance Security and license fee paid by Licensee after adjustment of all dues under this agreement without prejudice to rights and remedies applicable under the law.
- 8.10 Termination of this Agreement shall not release either party from its obligation to pay any sums then owing to the other party nor from the obligation to perform or discharge any liability that had been incurred prior thereto.
- 8.11 After completion of tenure of license/ pre-mature termination/ surrender, Licensee voluntarily agrees to remove all his belongings/equipment installed by Licensee inside Licensed premises within 15 days period from date of issue of termination of License Agreement, failing which, it shall become sole property of Licensor at zero/nil value and Licensor shall be free to do as it deems fit with the same. Licensee agrees voluntarily and un-equivocally not to seek any claim, damages, compensation or any other consideration whatsoever on this account.
- 8.12 All third party agreements, entered by Licensee, shall stand terminated on expiry of agreement between Licensor and Licensee.
- 8.13 Rights of Licensor on Termination: Licensor shall not have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the licensed space.

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

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

## 9 Dispute Resolution

### 9.1 Dispute Resolution

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

### 9.2 Arbitration

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

## 10 Representations and Warranties

10.1 The Licensee represents and warrants to Licensor that

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the commercial utilization (under the specified category, if any) of the licensed space;
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) It has fully complied with the below requirements of consortium, if applicable:
  - i. The number of Members in the Consortium does not exceed more than 3 (Three)
  - ii. The Lead member of the consortium maintains a share of at least 51% (Fifty-one percent), for a period of three years from the date of Letter of Intent (LOI).
  - iii. All members of the Consortium are liable jointly and severally for all obligations of the Licensee in relation to the Licensed space in accordance with the Agreement.
  - iv. For any change in the Consortium composition prior approval will be acquired from the Licensor as the case may be.
- (g) The execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Licensee Memorandum and Articles of Association or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Licensee is a party or by which Licensee or any of its properties or assets are bound or affected;
- (h) There are no actions, suits, proceedings or investigations pending or to the Licensee's knowledge threatened against the Licensee at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute the Licensee Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;
- (j) It has complied with all applicable law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (k) No representation or warranty by the Licensee contained herein or in any other document furnished by the Licensee to Licensor or to any government authority in relation to Applicable

Permits contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;

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

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

10.3 Licensor covenants:

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

## 11 Miscellaneous

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

alternation to the same. The signage shape and location etc are subject to architectural controls to be issued by Licensor.

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

#### 11.6 Notices:

Licensor and Licensee voluntarily and unequivocally agrees –

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

Authorized Representative of Licensor:

Address of Communication of Licensor:

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



# APPENDIX-I Details of FCS Warehouse

## Layout map and area details



FCS warehouse shall be provided for devolve as a Gaming Zone center as bare space only and the licensee shall carry out fit-out works on its own cost as, per the business requirement within said premises but without in any way damaging main/shell structure or building façade or equipment's installed by the licensor and building infrastructure of the said premises. Licensee shall need to take prior written approval from Licensor through a written notice prior to commencement of any fit-out works and if necessary licensor reserves the right to ask for and review the fit-out plan/drawings before providing consent.

The area of can develop for Restaurant & Souvenir shop in 20% (Maximum) of allocated space.

Note-1: In case of any concerns or difference of opinion regarding area calculation/ allocation, decision of Collector, Diu or person authorized by Licensor, shall be final and binding.

Note-2: Spaces offered on License basis are on “as is where is basis”. On this area the successful Applicants are expected to carry out all works, as needed, on its own cost, for commercial utilization of the Licensed space subject to conditions under this Agreement.

## APPENDIX-II Prohibited Activities

Prohibited activities at Development and operation of Gaming Zone in Diu

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

## ANNEXURE-III Declaration cum Undertaking

(on letter head of Applicant)

To

Chief Executive Officer,  
Diu Smart City Ltd,  
Diu

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

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Signature of Applicant

Date: \_\_\_\_\_